# INDIAN HOUSING ACT OF 1982

## HEARING

BEFORE THE

## SELECT COMMITTEE ON INDIAN AFFAIRS
## UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

**S. 2847**

TO PROVIDE FOR AN INDIAN HOUSING PROGRAM FOR CONSTRUCTION AND FINANCING OF HOUSING FOR INDIANS, AND FOR OTHER PURPOSES

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SEPTEMBER 22, 1982
WASHINGTON, D.C.

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# INDIAN HOUSING ACT OF 1982

SEPTEMBER 22, 1982

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
*Washington, D.C.*

The committee met, pursuant to notice, at 9:40 a.m., in rooms 1318 and 5302, Dirksen Senate Office Building, Senator William S. Cohen (chairman) presiding.

Present: Senators Cohen, Andrews, Cochran, Domenici, and Schmitt.

Staff present: Timothy C. Woodcock, staff director, and Peter Taylor, general counsel.

Senator COHEN. The hearing will come to order. Today's hearing is on S. 2847, the Indian Housing Act of 1982. S. 2847 was introduced on August 17 of this year by Senator Cochran who will present testimony this morning. It addresses the difficult and compelling problem of Indian housing, a topic that has received a great deal of much-needed scrutiny since the present administration took office.

Before discussing the bill, I would like to make a few short remarks about the development of Indian housing programs.

Since the early 1960's, the primary source of housing assistance for Indian tribes has been the public assistance housing program administered by the Department of Housing and Urban Development. Although great strides have been made under the HUD programs to improve housing for American Indians, current figures from the Bureau of Indian Affairs indicate that Indian housing remains at a much lower level of quality than that of the public at large.

Although the HUD programs work well from the housing recipient's point of view, in fact, the Indian housing program at HUD has long been the subject of criticism. When this administration prepared its first budget recommendations for fiscal year 1982, it contended that the HUD Indian housing programs were excessively expensive, poorly managed, and ought to be terminated.

Accordingly, it recommended the elimination of funding for Indian housing for fiscal year 1982 and repeated that request for fiscal year 1983.

At the same time, the administration voiced its commitment to the continuation of Indian housing under different and improved administration. To that end, the Office of Management and Budget established a task force of Indian housing to review the existing programs and make recommendations on how to improve the delivery system to reduce the cost and to bring greater flexibility to Indian housing.

In March of this year, the administration testified that the recommendation of this task force would be forthcoming in 2 weeks.

To date, no recommendations have been received by the committee and I believe that the witnesses of the administration will today shed further light on the activity of the task force.

S. 2847 is companion legislation to H.R. 5988 which has been the subject of extensive hearings before the Interior Legislative Affairs Committee. This bill would place the responsibility for the administration of an Indian housing program in the Bureau of Indian Affairs. The present Indian housing program, however, would remain with HUD although it received no new funding except to honor its contract commitments.

Title I in S. 2847 would continue the housing improvement program now administered by the BIA. Title II would establish an Indian finance fund for housing to assist Indian families who are unable to finance the full cost of their homes. This title would also impose sanctions on Indian tribes and individual Indians who failed to make payments as they agreed. Title III would enable Indian families who are able to pay for their homes but who are unable to secure financing because of the trust status of their lands to qualify for Federal loan guarantees.

The bill has other features that are novel and, I think, important.

For example, it provides, under certain circumstances, that trust funds of Indian tribes may be attached for failure to honor the terms of a housing contract with the United States. This may, however, only be taken after a finding by the Secretary of the Interior that a tribe has acted in bad faith. At present, the United States has no such recourse.

It also provides a new method of funding for Indian housing whereby moneys would be appropriated for the actual cost of the housing authorized in a given fiscal year.

This constitutes a great departure from the present method of funding through long-term contract authority.

S. 2847 raises many interesting and innovative suggestions. I look forward to hearing from today's full schedule of witnesses.

At this time, I will place a copy of S. 2847 in the hearing record.

[The bill follows. Testimony begins on p. 40.]

97TH CONGRESS
2D SESSION

# S. 2847

To provide for an Indian housing program for construction and financing of housing for Indians, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

AUGUST 17, 1982

Mr. COCHRAN (for himself, Mr. DOMENICI, Mr. ANDREWS, and Mr. NICKLES) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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# A BILL

To provide for an Indian housing program for construction and financing of housing for Indians, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Indian Housing Act of 1982".

FINDINGS AND POLICY

SEC. 2. (a) The Congress finds, based upon the Federal Government's historical and special legal relationship with, and resulting responsibility to, American Indian people that—

(1) the goal of decent, safe, and sanitary housing has not been realized for many Indian families and elderly residing on Indian reservations and in Indian communities;

(2) nearly 40 per centum of all Indian housing is in substandard condition as compared with a national figure of 12 per centum;

(3) this situation is of grave concern; and

(4) special efforts are needed to mobilize public and private resources for the realization of this goal.

(b) It is declared to be the policy of the United States to provide grants, financing, and loan guarantees to assist Indians in obtaining decent, safe, and sanitary housing.

DEFINITIONS

SEC. 3. For the purpose of this Act, the term—

(1) "adjusted family income" means gross family income less $1,000 for each member of the household, plus a further deduction of $3,400 or the amount of itemized deductions from the family's most recent Federal income tax return, whichever is higher;

(2) "amortization payment" means that payment which would be the equivalent of the level monthly amount needed to amortize the capital cost of a house over the term of a housing assistance contract for twenty-five years at the Federal Housing Administra-

tion mortgage rate in effect on the date of the execution of a project agreement;

(3) "family" means one or more persons maintaining a household. The tribal housing agency shall determine which adult members of a family will be required to execute a housing assistance contract;

(4) "housing assistance contract" means the executed agreement between the tribal housing agency and an eligible family which specifies the terms, conditions, rights, and responsibilities of the parties;

(5) "Indian" means a person who is a member of an Indian tribe or who is an Indian as defined in section 19 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 479);

(6) "mortgage" means a mortgage, deed of trust, or any other instrument establishing a lien on real property;

(7) "project" means the entire undertaking to provide housing under a project agreement, including the minimum number of housing units to be developed or rehabilitated with funds allocated under such agreement;

(8) "Secretary" means the Secretary of the Interior; and

(9) "standard housing" means a dwelling in a condition which is decent, safe, and sanitary so that it at least meets the following minimums—

(i) general construction conforms to applicable standards for the region;

(ii) the heating system has the capacity to maintain a minimum temperature of sixty degrees Fahrenheit in the dwelling during the coldest weather in the region. It must be safe to operate and maintain and deliver a uniform distribution of heat. Applicable local heating codes are to be followed or, if there are no applicable local codes, county and State codes are to be used as a guide;

(iii) the plumbing system includes a properly installed system of piping. Fixtures consist of a kitchen sink and a partitional bathroom with lavatory, toilet, and bath or shower. The water supply, plumbing, and sewage disposal systems meet minimum standards of the Indian Health Service, tribe, county, or State, whichever is applicable;

(iv) the electrical system includes wiring and equipment properly installed to safely supply electrical energy for adequate lighting and for operation of appliances. The tribal, county, or State

electrical code, whichever is applicable, must be used as an alternative standard. If no codes exist, a minimum of two circuits per dwelling must be installed with provision for at least one additional circuit for future use; and

(v) family size per dwelling is not less than—

(I) five hundred and seventy square feet for a family of up to four members;

(II) eight hundred and fifty square feet for a family of five to seven members; and

(III) one thousand and twenty square feet for a family of eight or more members;

except that the Secretary, upon the request of a tribe or tribal housing agency, may, in appropriate circumstances, waive the minimum size standards established by this subparagraph;

(10) "tribal housing agency" means that entity or administrative unit of the tribal government which has been designated or established by the tribe to administer housing programs under this Act;

(11) "tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined or established pursuant to the Alaska Native Claims Settlement Act (86 Stat. 688) which is recog-

nized as eligible for the special programs and services provided by the Bureau of Indian Affairs to Indians because of their status as Indians; and

(12) "trust land" means land title to which is held by the United States for the benefit of an Indian or Indian tribe or title to which is held by an Indian or Indian tribe subject to a restriction against alienation imposed by the United States.

## TITLE I—INDIAN HOUSING IMPROVEMENT PROGRAM

### BASIC AUTHORITY

SEC. 101. (a) There is hereby established an Indian housing improvement program for the purpose of making grants or providing assistance to preserve existing housing, make repairs, and construct or acquire standard housing for Indians.

(b) The Secretary is authorized, upon application of an Indian tribe or individual, to make grants or provide assistance to assist Indian families who are not eligible for housing assistance under titles II and III of this Act because of low income or extremely isolated circumstances.

(c) The Secretary shall assure that grants or assistance provided under this title shall be consistent with plans and priorities established by tribes and shall, upon the request of the appropriate tribe or tribal housing agency, make such

grants or assistance available through agreements with the tribe or tribal housing agency. In the absence of such an agreement, the Secretary may—

(1) make, with appropriate safeguards, direct grants to individual Indians;

(2) contract with private construction firms pursuant to standard Federal contracting procedures, except that the Act of April 30, 1908 (35 Stat. 71; 25 U.S.C. 47), as amended, shall apply unless the concerned tribe requests, through formal action, that the applicability of the Act be waived on a specific procurement action; or

(3) have repairs or new construction performed directly by the Bureau of Indian Affairs.

(d) With respect to assistance provided under agreements entered into pursuant to subsection (c) of this section, a tribe or tribal housing agency, in its discretion, may require an assisted family to make a monthly payment not to exceed the administrative charge established for such tribe or tribal housing agency pursuant to section 210 of this Act or, if no such amount has been approved, an amount satisfactory to the Secretary. Receipts from such payments shall be used solely for housing-related activities of such tribe.

ELIGIBLE ACTIVITIES

Sec. 102. (a) Grants or assistance may be provided under this title to—

(1) finance minor repairs and additions to existing substandard housing to improve safety and sanitary conditions until such time as standard housing assistance can be made available to such family;

(2) finance major repair, renovations, or enlargement of existing dwellings that are structurally sound, but deteriorated, and which can be economically placed in standard condition; and

(3) finance the construction or acquisition of new standard housing where severe need is demonstrated and it is established that there is no reasonable prospect that standard housing can be financed from other sources.

(b) Appropriate insurance shall be required on housing constructed, acquired, or improved under subsection (a) (2) or (3) of this section, unless waived by the Secretary.

RESERVATION OF INTEREST

Sec. 103. (a) Where a house constructed, acquired, or repaired pursuant to section 102(a) (2) or (3) of this title is located on trust land, the Secretary shall not approve the sale or lease of such land, unless the provisions of section 104 of this title have been met.

(b) Where a house constructed, acquired, or repaired pursuant to section 102(a) (2) or (3) of this title is located on fee land, the Secretary shall insure that a lien upon such land is recorded under appropriate State law, noting the encumbrance imposed by section 104 of this title.

SALE OF PROPERTY

SEC. 104. Any house constructed, acquired, or repaired pursuant to section 102(a) (2) or (3) of this title may be sold, except that the sale price shall not be less than the value of the assistance provided pursuant to section 102 reduced five per centum per year for twenty years. The amount of the minimum sale price shall be reimbursed to the United States and shall be credited to the appropriation authorized by section 105 of this title. Any amount in excess of such minimum sale price shall be the property of the assisted Indian family. Where such house is located on tribal trust land, the tribe shall have the right of first refusal on the sale of such house.

AUTHORIZATION

SEC. 105. There are authorized to be appropriated for the purpose of this title, such sums as may be necessary in fiscal year 1983, not to exceed $30,000,000 in fiscal year 1984, not to exceed $40,000,000 in fiscal years 1985 and 1986, and not to exceed $50,000,000 in fiscal year 1987.

## TITLE II—INDIAN HOUSING FINANCE FUND

### ESTABLISHMENT

SEC. 201. There is established an Indian housing finance fund (hereinafter referred to as the "fund") for the purpose of providing financing to Indian tribes for the construction, acquisition, or rehabilitation of standard housing for Indian families who are unable to obtain financing from other sources on reasonable terms and conditions and who are not eligible for assistance under title III of this Act, but who can meet the minimum monthly payment required by this title.

### TRIBAL HOUSING PLAN

SEC. 202. As a prerequisite for eligibility for financing from the fund, a tribe must prepare and submit to the Secretary for approval a tribal housing plan. Such plan, at a minimum, shall include an inventory of existing housing; an assessment of housing needs; a proposed tribal administrative structure to implement a housing program; an assessment of the tribe's capacity to administer such program; and a projection of how the tribe intends to meet its housing needs over a multiyear period.

### APPLICATIONS

SEC. 203. (a) Applications for financing from the fund shall be submitted to the Secretary and shall specify the number of housing units to be developed and methods of production and development; shall include preliminary drawings

and specifications; and shall otherwise be consistent with the approved tribal housing plan.

(b) Applications for funding shall be evaluated and approved, subject to the availability of appropriations, based upon, but not limited to, the following criteria—

(1) a priority for those tribes which have not received financing from the fund in prior fiscal years;

(2) a determination of the administrative, management, and accounting capability of the tribe to implement the proposed housing project;

(3) a determination of the percentage of tribal housing units in a substandard condition;

(4) the housing needs of such tribes as contained in the biannual housing inventory required by section 405 of this Act; and

(5) a determination by the Secretary that there is a reasonable prospect of repayment.

(c) The application shall include a tribal ordinance or other evidence of action of the governing body of the tribe designating or establishing a tribal housing agency (hereinafter referred to as the "agency") which shall be responsible for implementing the project agreement.

(d) Nothing herein shall preclude the submission and approval of multitribal applications and the Secretary shall en-

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courage, but shall not require, multitribal applications to achieve economy of scale in housing projects.

PROJECT AGREEMENT

SEC. 204. Upon approval of an application, the Secretary and the agency shall enter into a project agreement which shall specify the amount of funds to be made available, the minimum number of housing units to be developed with such funds, the production method, and such other terms and conditions as may be reasonable and consistent with the provisions of this title.

ADMINISTRATIVE AND FUNDING PROVISIONS

SEC. 205. (a) The project agreement shall set forth the administrative and judicial authorities, forums, procedures, remedies, and sanctions that the tribe or tribal housing agency will employ to insure collections of monthly payments and the deposit of residual receipts as required by section 211 of this title. It shall also contain a provision that the tribe specifically agree that—

(1) it shall require any Indian family executing a housing assistance contract to authorize the Secretary, on his own motion or at the request of the agency, to attach unobligated trust funds of the adult members of such family for a failure to meet the obligations incurred in such contract; and

(2) its unobligated tribal trust funds may be subject to attachment for failure to meet the requirements of section 211 only as provided in subsection (b) of this section.

Notwithstanding any other provision of law, Indian trust funds shall be subject to attachment as provided in this section. Funds attached under this section shall be paid into the fund as residual receipts.

(b) Tribal trust funds shall be subject to attachment only when (1) its tribal housing agency has failed to meet the financial obligations imposed under section 211 of this title; (2) the Secretary has reasonably exhausted all other available remedies to satisfy the default; and (3) the Secretary has made a specific finding that the tribe has not acted in good faith in carrying out the undertaking as required in subsection (a) of this section.

(c) Prior to the attachment of any trust funds as provided in this section, the Secretary shall provide the tribe or Indian family, as the case may be, with written notice of his intent. Within sixty days of such notice, the tribe or Indian family shall be entitled to (1) pay the amount in default; (2) negotiate a repayment schedule satisfactory to the Secretary; or (3) institute such administrative appeals or judicial actions as may otherwise be authorized.

(d) The Secretary may not refuse assistance under this title on the basis that a tribe or Indian family has no trust funds to their credit.

DISBURSEMENTS

SEC. 206. (a) An initial disbursement may be made from the fund, under a project agreement, to cover costs incurred by the agency for preliminary planning and administration. The initial disbursement shall not exceed $50,000 or 3 per centum of the total funding of the project, whichever is greater. Further disbursements under the project agreement shall be made based upon the percentage of completion of the project as specified in the project agreement and as determined pursuant to the plans and specifications approved under section 207 of this title. Percentage of completion of a project shall be certified jointly by the agency and a person designated by the Secretary who shall have no financial or tribal interest in the project.

(b) A jointly conducted final inspection and certification of completion of the project shall be made by the designee of the Secretary, the agency, the contractor, or developer, and, where appropriate, the Indian Health Service.

(c) All moneys disbursed from the fund shall be maintained by the agency in an account separate from all other funds of the tribe or the agency and shall be accounted for as provided in the project agreement.

(d) All housing units provided for in the project agreement shall be placed under construction or acquisition contracts within one year of the execution of the project agreement, except that, where the Secretary determines that the inability of the agency to place units under contract is due to circumstances beyond the control of the agency, he may extend the period for an additional ninety days. Funds for units not placed under contract within such time shall be returned to the fund or such amount shall be deducted from approved allocations from the fund for such tribe in subsequent years.

SUBMISSION OF FINAL PLANS AND SPECIFICATIONS

SEC. 207. Within one hundred and twenty days of the initial disbursement of funds as provided in section 206, the agency shall submit to the Secretary the final plans and specifications for housing units to be developed under the project agreement. Such plans and specifications shall include a phased construction schedule necessary to facilitate periodic disbursements from the fund as provided in section 206. The Secretary shall approve such plans and specifications if they meet the standard housing criteria as defined in section 3(9) of this Act and are otherwise consistent with the project agreement. The Secretary shall encourage the development of plans and specifications that reasonably promote the con-

servation and efficient use of energy in housing constructed under the project agreement.

SITE ACQUISITION

SEC. 208. (a) Prior to the construction or acquisition of any housing units under a project agreement, the agency shall secure either a fee title to, or a lease of, such lands as may be necessary for the construction or acquisition of such units.

(b) Where the housing site is upon tribal or individual trust land, the agency shall secure, without cost to itself, a twenty-five year lease with option to renew for not to exceed an additional twenty-five years. Where the housing site is on fee land, the agency shall require, without cost to itself, the transfer of the fee title to such lands.

(c) Where the Secretary determines that no suitable lands are available to the tribe for construction of housing, he may authorize the use of project funds for land purchase. Such land purchase cost shall be a part of the total project cost.

HOUSING ASSISTANCE CONTRACT PROVISIONS

SEC. 209. (a) An eligible Indian family shall make application for housing assistance to the agency. Upon approval of the application by the agency, the family and the agency shall enter into a housing assistance contract (hereinafter referred to as the "contract") in which the agency shall agree

to construct or acquire a standard housing unit or rehabilitate an existing house to standard condition for such family upon lands to be provided by the family or the tribe.

(b) The family shall agree in such contract that it shall—

(1) at no cost to the agency, lease or transfer its trust or fee lands on which such housing is to be built, if required by the agency;

(2) make monthly payments to the agency in the amount of 20 per centum of the adjusted family income, except that (A) the adjusted family income shall be reviewed annually during the twenty-five year period of the contract and the monthly payment shall be adjusted upward or downward as indicated, and (B) such monthly payment shall be not more than the amortization payment and not less than the minimum payment established in section 210 of this title;

(3) accept responsibility for all utilities and maintenance; and

(4) subject the trust funds of its adult members to attachment as provided in section 205 of this title.

(c) Where the housing site is located on the trust or fee lands of the family which has fully met its obligations under the housing assistance contract, at the end of twenty-five years, the land will revert to its former status and the agency

will transfer full ownership of the house to the family. Where the housing site is located on tribal lands and the family has fully met its obligations under the housing assistance contract, the lands will revert to their former status and the agency will transfer ownership of the house to the family, except that the tribe may not deny the family the continued use of the land site unless the Secretary, the tribe, and the family negotiate for the tribal purchase of the house for an amount not less than the fair market value of such house.

MINIMUM PAYMENT

SEC. 210. The project agreement shall provide for a minimum monthly payment to be made by families receiving assistance under this title. Such minimum monthly payment shall be composed of—

(1) an administrative charge which shall be in an amount deemed sufficient by the Secretary to enable the agency to perform the administrative functions required by this Act;

(2) a premium for insurance; and

(3) an amount deemed reasonable by the Secretary as a contingency reserve for maintenance. Such amounts shall be deposited by the agency into an interest-bearing account as a reserve for maintenance which may be used, principal and interest, as provided in section 214 of this title.

The minimum payment shall be reviewed annually and may, subject to the approval of the Secretary, be adjusted upward or downward as warranted.

RESIDUAL RECEIPTS

SEC. 211. (a) The project agreement shall require the agency to establish an account for residual receipts. Residual receipts shall be the amount of the monthly payments collected by the agency less the minimum payment to be retained by the agency as provided in section 209.

(b) Residual receipts shall be deposited by the agency in the fund quarterly on a fiscal year basis. The agency shall, on a quarterly basis, certify to the Secretary the collection and deposit of the required monthly payments in the agency's residual receipt account. Initial residual receipts due the fund are those that are the result of monthly payments established by the agency and which have been certified by an independent audit or agreed to by the Secretary in the project agreement. Thereafter, residual receipts due to the fund shall be in accordance with amounts established by an annual independent audit of the adjusted family incomes of the participating families.

(c) Residual receipts due the fund from an agency shall not fall below 90 per centum of the amount due based upon an amount established by the annual independent audit as required by subsection (b). Within ten days after a determina-

tion of a default by an agency in its quarterly payment of residual receipts to the fund, the Secretary shall notify the tribe and the agency in writing of such determination. The tribe or the agency shall have thirty days within which to satisfy the default. Upon a failure of the tribe or agency to do so, the Secretary may—

(1) declare such tribe to be ineligible for further housing assistance from the fund;

(2) take any other action to satisfy the default as may be otherwise authorized by law; or

(3) attach tribal or appropriate individual trust funds as provided and authorized in section 205 of this title, except that the Secretary may exercise this authority only after all other reasonable action has been exhausted.

MONITORING AND INSPECTION

SEC. 212. (a) The agency shall be responsible for the implementation of monitoring and construction inspection procedures necessary to assure the Secretary of satisfactory quality control and fund utilization, including compliance with the minimum housing standards and the approved drawings and specifications of a project. When the Secretary determines that the monitoring and inspection procedures are not adequate, he shall initiate action to assure implementa-

tion of such procedures by the agency as a requirement for continuation of the project.

(b) The technical staff of the Indian Health Service within the Department of Health and Human Services shall, in the course of fulfilling its existing responsibilities in providing sanitation facilities to Indian housing, be responsible for the surveillance of the construction, inspection, and monitoring procedures of the agency. The Indian Health Service shall provide recommendations to the agency and the Secretary as to the adequacy of the construction inspection procedures of the agency to assure compliance with the minimum housing standards and the approved plans and specifications.

BONDING REQUIREMENTS

SEC. 213. (a) Tribal and agency officials and employees who are responsible for the receipt and disbursement of funds under this title shall be bonded in amounts satisfactory to the Secretary. No such disbursement shall be made until a bond satisfactory to the Secretary is obtained.

(b) The agency shall require performance bonds from its contractors except for those projects where settlement is on the basis of turnkey constuction.

(c) The agency shall also require irrevocable letters of credit, mechanics' and workmen's lien bonds and warranty maintenance bonds or cash equivalents from its contractors in amounts satisfactory to the Secretary.

MAINTENANCE AND UTILITIES

SEC. 214. Maintenance and cost of utilities for the house shall be the responsibility of the participating family. Upon the failure of a family to perform adequate maintenance to the extent necessary to prevent health hazards or preserve the capital value of the unit, the agency shall use the reserve for maintenance established by section 210 of this title to correct any deficiencies. At the end of the contract period, the amount remaining in the maintenance reserve account to the credit of the family, excluding any accrued interest, shall become the property of the family.

AWARD OF CONTRACTS

SEC. 215. All contracts under this title shall be awarded in accordance with procedures satisfactory to the Secretary and shall result in the judicious use of Federal funds. Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) shall apply to all contracts, subcontracts, and employment opportunities supported by funding under this title, except that a tribe may, by formal action of its governing body, waive the applicability of section 7(b) in specific cases.

SALE OF HOUSING

SEC. 216. A family may, subject to the approval of the Secretary and the agency, sell or purchase a house constructed, acquired, or rehabilitated with funds under a project

agreement. The minimum sale or purchase price of the house shall be the amount of the principal remaining on the amortization schedule for such house, except that, where a family has a deficit in its reserve for maintenance account, such minimum sale or purchase price shall be increased by that amount. The minimum sale or purchase price shall be reimbursed to the fund and any amount in excess of the minimum sale price shall be the property of the family.

ASSIGNMENTS

SEC. 217. (a) The contractual interest of a family in housing constructed, acquired, or rehabilitated with moneys provided from the fund may be inherited or assigned if the heirs, devisees, or assignees agree to assume the responsibilities and obligations under the original contract, and if any assignee of such interest is otherwise eligible for assistance under this title.

(b) Abandoned houses shall revert to the agency and shall be available to another eligible family under a new housing assistance contract.

(c) No Indian may be party to more than one housing assistance contract providing for a new standard house under titles I and II of this Act, except that the Secretary may waive this limitation in appropriate circumstances.

DOWNPAYMENT ASSISTANCE

SEC. 218. Tribal housing agencies may use funds made available under a project agreement, if the agreement so provides, to assist Indian families in making a downpayment, including closing costs, on standard housing to be financed through other sources of credit. The family shall be obligated to repay such amount, with or without interest, over a period of not to exceed ten years. Exclusive of closing costs, assistance provided under this section shall not be in excess of 10 per centum of the purchase price of the house.

CREDIT ELSEWHERE

SEC. 219. If an agency, in establishing the adjusted family income of an applicant family, determines that the income of such family is sufficient to support the payment of a reasonable economic rent, the agency shall acquire such family to provide evidence that at least two lending institutions in the area making home mortgage loans have rejected loan applications submitted by such family before the family is eligible for housing assistance under this title.

RENTAL HOUSING

SEC. 220. Funds made available under this title may, as provided in a project agreement, be used to construct rental housing, except that—

(1) the tribe shall require monthly rental payments from eligible Indian families as determined by section

209 except that the maximum monthly payment shall be an amount agreed upon by the Secretary and the agency;

(2) a minimum monthly rental payment shall be established as provided in section 210 and the tribe shall be responsible for the payment of residual receipts as provided in section 211;

(3) the tribe shall be responsible for the payment of utilities and maintenance costs; and

(4) all other appropriate provisions of this title shall be applicable to such rental housing projects.

AUTHORIZATION

SEC. 221. There are authorized to be appropriated for the purpose of carrying out the provisions of this title, such sums as may be necessary in fiscal year 1983; $100,000,000 in fiscal year 1984; $200,000,000 in fiscal year 1985; and such sums as may be necessary for fiscal years 1986 and 1987, which, when added to the total residual receipts and other deposits paid into the fund during the preceding fiscal year, will restore the balance in the fund to $250,000,000 at the beginning of each fiscal year.

# TITLE III—INDIAN HOUSING LOAN GUARANTEE FUND

## ESTABLISHMENT OF FUND

SEC. 301. In order to provide access to sources of private financing for Indian families who otherwise would not be eligible for housing credit because of Federal laws restricting mortgage or other encumbrance of trust land, there is established an Indian housing loan guarantee fund (hereinafter referred to as the "guarantee fund") which shall be available as provided in section 311 of this title.

## GUARANTEE AUTHORITY

SEC. 302. The Secretary is authorized to guarantee not to exceed 100 per centum of the unpaid principal and interest due on any loan made to an Indian for the acquisition or construction of a standard house on trust land which may be secured by any appropriate means.

## INTEREST RATE

SEC. 303. Loans guaranteed pursuant to this title shall bear interest (exclusive of premium charges for guarantee and service charges, if any) at a rate agreed upon by the borrower and the lender and determined by the Secretary to be reasonable, but which is not more than that being charged in the area by lenders for home mortgage loans without a guarantee or insurance by a Federal agency or instrumentality.

PREMIUM CHARGES

SEC. 304. The Secretary shall fix such premium charges for the guarantee of loans as are in his judgment adequate to cover expenses and probable losses, and shall deposit receipts for such charges in the guarantee fund.

APPLICATION

SEC. 305. The application for a loan to be guaranteed hereunder shall be submitted to the Secretary for prior approval. Upon approval, the Secretary shall issue a certificate as evidence of the guarantee. Such certificate shall be issued only when the Secretary determines there is a reasonable prospect of repayment.

SALE OR ASSIGNMENT OF LOANS

SEC. 306. Any loan guaranteed hereunder, including the security given therefore, may be sold or assigned by the lender to any financial institution subject to examination and supervision by an agency of the United States or of any State or the District of Columbia.

LIMITATIONS ON LOANS

SEC. 307. Any loans guaranteed hereunder shall be made by a financial institution subject to examination and supervision by an agency of the United States, a State, or the District of Columbia and shall meet the following requirements:

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(1) the maturity of any loan guaranteed hereunder shall not exceed thirty-three years;

(2) loans guaranteed hereunder may be made by any lender satisfactory to the Secretary except loans insured or guaranteed by an agency or instrumentality of the Federal Government or made by an organization of Indians from funds borrowed from the United States shall not be eligible for guarantee hereunder;

(3) the liability under the guarantee shall decrease or increase pro rata with any decrease or increase in the unpaid portion of the obligation pursuant to the provisions of the loan agreement; and

(4) any loan made by any national bank or Federal savings and loan association, or by any bank, trust company, building and loan association, or insurance company, authorized to do business in the District of Columbia, at least 20 per centum of which is guaranteed hereunder, may be made without regard to the limitations and restrictions of any other Federal statute with respect to (A) ratio of amount of loan to value of property; (B) requirement of mortgage or other security; (C) maturity of loans; (D) priority of lien; or (E) percentage of assets which may be invested in real estate loans.

REGULATORY AUTHORITY

SEC. 308. Whenever the Secretary finds that any lender or holder of a guarantee certificate fails to maintain adequate accounting records or to demonstrate proper ability to service adequately loans guaranteed or to exercise proper credit judgment, or has willfully or negligently engaged in practices otherwise detrimental to the interests of a borrower or the United States, the Secretary may refuse, either temporarily or permanently, to guarantee any further loans made by such lender or holder, and may bar such lender or holder from acquiring additional loans guaranteed hereunder. The Secretary shall not refuse to pay a valid guarantee on loans previously made in good faith.

DEFAULT PROCEEDINGS

SEC. 309. (a) In the event of a default on a loan guaranteed hereunder, the lender holding the guarantee certificate must notify the Secretary of the default in writing and may thereupon proceed under either of the following methods for obtaining payment under the guarantee—

(1) the lender may initiate foreclosure proceedings in a court of competent jurisdiction after providing prior written notice of such action to the Secretary and upon a final order authorizing foreclosure by such a court and upon submission to the Secretary of a claim for payment under the guarantee, the Secretary shall

pay to such holder the full pro rata portion of the amount guaranteed plus reasonable fees and expenses as approved by the Secretary and the Secretary shall be subrogated to the rights of the holder of the guarantee and receive an assignment of the obligation and security; or

(2) without seeking a judicial foreclosure or in the event that a foreclosure proceeding initiated by or on behalf of the lender as authorized under paragraph (1) above continues for a period in excess of one year, the lender may submit a claim for payment under the guarantee, except that the Secretary shall only pay to such holder for a loss on any one loan an amount equal to 95 per centum of the pro rata portion of the amount guaranteed, and the Secretary shall be subrogated to the rights of the holder of the guarantee and receive an assignment of the obligation and security.

(b) Upon receipt from the lender of a notice of default, the Secretary may, in his sole discretion, accept assignment of such loan if such action is determined by the Secretary to be in the best interest of the United States and shall thereupon pay to the holder the pro rata portion of the amount guaranteed and shall be subrogated to the rights of the holder of the guarantee and receive an assignment of the obligation and security.

(c) Before any reimbursement is made under subsection (a), all reasonable collection efforts shall have been exhausted by the lender. Upon reimbursement, in whole or in part, to the lender, the note or judgment evidencing the debt shall be assigned to the United States and the lender shall have no further claim against the borrower or the United States. The Secretary shall then take such further collection actions as may be warranted.

CONCLUSIVENESS

SEC. 310. Any evidence of guarantee issued by the Secretary shall be conclusive evidence of the eligibility of the loan for guarantee under the provisions of this title and the amount of such guarantee. Such evidence shall be incontestable in the hands of the bearer and the full faith and credit of the United States is pledged to the payment of all amounts agreed to be paid by the Secretary as security for such obligations. Nothing in this section shall preclude the Secretary from establishing, as against the original lender, defenses based on fraud or material misrepresentation or bar him from establishing by regulations in force on the date of such issuance or disbursement, whichever is earlier, partial defenses to the amount payable on the guarantee.

USE OF GUARANTEE FUND

SEC. 311. (a) The guarantee fund established by section 301 shall be available to the Secretary as a revolving fund

without fiscal year limitation for carrying out the provisions of this title. The guaranteed loan program under this title shall be operated separately from the Indian housing finance fund established under title II of this Act and no funds designated for one program may be transferred to the other program. There are authorized to be appropriated such sums as may be necessary in fiscal year 1983; $2,500,000 in fiscal year 1984; $3,000,000 in fiscal year 1985, and $3,500,000 in fiscal years 1986 and 1987.

(b) The Secretary may use the guarantee fund for the purpose of fulfilling the obligations with respect to loans guaranteed under this title, but the aggregate outstanding principal amount guaranteed by the Secretary shall be limited to $400,000,000 or such lesser amount as may be provided in appropriations Acts.

(c) All funds, claims, notes, mortgages, contracts, and property acquired by the Secretary under this section, and all collections and proceeds therefrom, shall constitute assets of the guarantee fund. All liabilities and obligations of such assets shall be liabilities and obligations of the guarantee fund. The Secretary is authorized to make agreements with respect to servicing loans acquired or guaranteed under this title and to purchase such guaranteed loans on such terms and conditions as the Secretary may prescribe.

(d) The Secretary may utilize the guarantee fund to pay taxes, insurance, prior liens, expenses necessary to make fiscal adjustments in connection with the application and transmittal of collections, and other expenses and advances to protect the Secretary for loans which are guaranteed under this title or held by the Secretary, to acquire such security property at foreclosure sales or otherwise, and to pay administrative expenses.

## TITLE IV—MISCELLANEOUS PROVISIONS

### OFFICE OF INDIAN HOUSING PROGRAMS

SEC. 401. (a) The Secretary shall establish in the Bureau of Indian Affairs an Office of Indian Housing Programs which shall be vested with the primary responsibility for administering the programs established by this Act. The Office of Indian Housing Programs shall be under the supervision of a Director of Indian Housing Programs who shall be under the immediate supervision of the Assistant Secretary of the Interior for Indian Affairs.

(b) The authority to approve applications as provided in section 203, execute project agreements as provided in section 204, approve loan guarantees under title III, and to allocate and assign personnel of the Office of Indian Housing Programs within the administrative structure of the Bureau of Indian Affairs shall not be delegated below the Office of the Director of Indian Housing Programs.

(c) Funds appropriated under authorization of this Act shall include employee costs and other administrative expenses of the Office of Indian Housing Programs. Annual appropriation requests for the Office of Indian Housing shall specify the number of employees by location, employee costs, and related administrative expenses. Funds made available for such purposes shall not be available for any other purposes.

TECHNICAL ASSISTANCE

SEC. 402. (a) The Secretary is authorized to provide technical assistance to Indian tribes to assist them in developing tribal housing plans, preparing and submitting applications for financing, and implementing housing programs funded under this Act.

(b) The Secretary shall provide for the establishment of a training program to develop an understanding by the participating families of the respective roles and responsibilities of the tribal housing agency, the Federal Government, and the participants under titles I and II. Such program shall include basic home maintenance training for participating families.

(c) Not to exceed 1 per centum of the funds appropriated under the authority of titles I and II may be used to provide the technical assistance and training authorized by this section.

INDIAN HEALTH SERVICE

SEC. 403. The Indian Health Service in the Department of Health and Human Services shall be responsible for the provision of water and sanitation facilities to houses constructed, acquired, or rehabilitated with assistance provided under this Act. The Secretary shall coordinate with the Secretary of Health and Human Services with respect to such responsibilities and activities and shall ensure that planning and budgeting for necessary roads and sanitation facilities shall be done in conjunction with planning and budgeting for new housing to be constructed with funds appropriated pursuant to this Act.

SITE IMPROVEMENTS

SEC. 404. (a) Funds appropriated under titles I and II may be used to provide site improvements, streets and driveways within multiunit housing projects. Such streets shall be built to the usual standards of the Bureau of Indian Affairs and, where appropriate, shall thereafter be maintained by the Bureau of Indian Affairs under existing road programs and authorities.

(b) All-weather access roads to multiunit projects constructed under this Act shall continue to be provided by the Secretary through existing road programs and authorizations.

HOUSING INVENTORY

SEC. 405. The Secretary shall conduct a biennial housing inventory of current Indian housing needs and conditions to be used as a basis for determining housing assistance needs for the purposes of sections 202 and 203 of this Act. The Secretary shall submit a copy of such inventory to the Congress.

STUDY

SEC. 406. The Secretary of the Interior shall, within two years after enactment of this Act, conduct and submit to the Congress a study of the potential uses of trust funds of Indian tribes and individuals to support, directly or indirectly, the provision of housing for Indians and Alaska Natives. Any recommendations of the Secretary must provide that the use of such funds shall be subject to the consent of the beneficial owner and that the United States will continue to ensure the integrity of such funds.

RULEMAKING

SEC. 407. The Secretary shall promulgate such rules and regulations as are necessary to carry out the provisions of this Act. The Chairman of the Committee on Interior and Insular Affairs of the House of Representatives and the Chairman of the Select Committee on Indian Affairs of the United States Senate, in consultation with the respective ranking minority members, shall each select two persons of

Indian descent knowledgeable in the field of Indian affairs and housing assistance programs. The Secretary shall assure that these persons are actively involved in the initial drafting and formulation of regulations developed to implement the provisions of this Act. While engaged in such activity, such persons shall be entitled to travel expenses, per diem, and a reasonable consultation fee. Funds for such expenses and fees shall be provided by the Secretary from any available funds. The responsibility of such persons shall cease with the promulgation of final rules and regulations by the Secretary.

RELATION TO OTHER PROGRAMS

SEC. 408. Housing assistance provided under this Act shall not exclude Indians from being eligible for other federally assisted housing programs.

Senator COHEN. For closing however, I would like to note that the Indian Affairs Committee is aware of the fact that the Banking and Housing Committee has long held jurisdiction over Indian housing and the members of that committee as well as the committee staff have been invited to participate in this hearing.

I believe the hearing will profit from their active participation.

Senator Schmitt, chairman of the Rural Housing Subcommittee is going to be present today and will bring his expertise in the field to bear on the legislation before us.

Senator Cochran, would you care to take over at this time?

Senator COCHRAN. Thank you very much, Mr. Chairman.

## STATEMENT OF THAD COCHRAN, A U.S. SENATOR FROM THE STATE OF MISSISSIPPI

Senator COCHRAN. First, I want to thank you for promptly scheduling this hearing to consider the legislation.

I am pleased to be here to testify in support of it.

Joining me as original cosponsors of the bill are Senators Domenici, Andrews, and Nickles. I appreciate very much their assistance.

As you pointed out, Mr. Chairman, there is no doubt that American Indians suffer from the worst housing conditions of any U.S. citizens.

Over 43 percent of all Indian families live in substandard housing compared to a national rate of 12 percent.

I might add that I am happy to have with me here before the committee, this morning, Phillip Martin.

Phillip Martin is tribal chief of the Mississippi band of Choctaw Indians. He is a friend of mine. He is quite well respected throughout the country for his leadership in matters of concern to Indian tribes. He is president of the National Tribal Chairman's Association as well.

According to statistics from the Bureau of Indian Affairs, 60,800 housing units on Indian reservations are in substandard condition. Approximately 28,800 of these units need to be replaced.

There are now 31,400 families without housing, bringing the total number of new units required to over 60,000.

The leaders of the Mississippi band of the Choctaw Indians in my State are very concerned about the housing needs of our citizens there. Private market funds are not available for reservation housing. It is difficult to find rental property off the reservation.

At least one-third of the existing housing on the Choctaw reservation is substandard. An equal number has been listed by the Indian health service as being overcrowded. There has never been enough housing to meet the needs of the population or to keep up with the deterioration.

There are 550 units needed this year. But only 200 units from the HUD program have been allocated, and that only after a good deal of strong encouragement. Since the termination of the HUD Indian housing program has been proposed, it is uncertain if any additional units will be planned for fiscal year 1983.

As you know, in 1981 the administration proposed eliminating the Indian housing program at the Department of Housing and Urban Development because of high cost, administrative complexity, and poor management.

This program has been the primary source of new housing assistance for Indians since the 1960's. Even though some revisions were made to adapt this essentially urban program to address rural area needs, its rigid requirements have caused unnecessary construction delays, and the HUD program has proven very costly to the Federal Government. In many cases, houses are overbuilt or unsuited to Indians' needs and cultural concerns.

The Bureau of Indian Affairs reports that some new housing has been provided by the Farmers' Home Administration, the Veterans Administration, tribal credit programs and private financing sources, but with limited success. The number of units constructed have not been significant, mainly in view of the trust land situation.

Under the existing program, HUD constructs the housing units, the Bureau of Indian Affairs provides the realty work and builds the roads to the project, and the Indian Health Service in the Department of Health and Human Services provides the water and sanitation facilities.

This requires the coordinated effort of three executive branch departments, two sets of congressional authorizing and appropriating committees and three sections within the Office of Management and Budget.

The complexity has severely hampered the effective administration of the HUD Indian housing program, particularly with respect to providing water and sewer facilities to new HUD units. Housing units have actually been allocated and constructed without funds being appropriated for the necessary water and sewer systems.

Other major administration objectives to the HUD program include the high costs and poor management. The HUD program locks the United States into a long-term commitment by subsidizing both the capital costs of the house and the interest over a long period of time. With interest, the cost per unit is between $160,000 and $170,000.

Very restrictive minimum property standards, excessive regulations, and application of the Davis-Bacon Act have inflated actual construction costs of each unit.

The program also includes additional costs of utility and maintenance subsidies.

The Indian Housing Authority established to manage HUD projects has had difficulties in collecting rents, keeping records, and providing adequate maintenance. This can be attributed to complex regulations, poorly trained personnel, infrequent audits, and lack of effective statutory means to enforce collections.

It is estimated that between 10 and 20 percent of Indian families needing housing or substantial repairs cannot afford to pay any amount or under the best of circumstances, could only afford to pay the very minimum.

But, some 10 percent of those families requiring new housing could pay an economic rent if long-term mortgage money were available. The remainder of the families have some abilities to pay but require some form of subsidy.

S. 2847 would establish a comprehensive housing program in the Bureau of Indian Affairs covering all categories of need by providing the necessary grants, financing, and loan guarantees.

Title I provides a statutory basis for the existing Indian housing improvement program administered by the Bureau of Indian Affairs. This program provides grants to Indian families who are at the very lowest income levels or in the most isolated or extreme circumstances. Grants under this title can be made through agreements with the tribe or directly to individual Indians.

Title II establishes an Indian housing finance fund for the purpose of providing financing to Indian tribes for the construction, acquisition, or rehabilitation of housing for Indian families who could not realistically support a full mortgage or who have some ability to pay.

The construction of new units or repair of existing units will be paid up front with no interest factor, in contrast to the present HUD program which involves a continuing Federal obligation over the full term of the mortgage.

A tribal housing agency would collect monthly payments from the individual families and, after deducting administrative and maintenance expenses, return the balance to a revolving fund. This fund can be used for future housing needs, and result in a diminishing financial involvement of the Federal Government.

Tribes would have the primary responsibility for planning and administering their housing program. Provisions are included to provide tribes with technical assistance, and to encourage innovative and cost-effective use of funds in order to achieve the greatest number of units.

To prevent a long pipeline of unbuilt homes, each tribe is required to have their project under contract for construction within 1 year with provisions for a 90-day extension.

Sanctions are imposed on both the tribe and the individual to assure payment of individual and tribal financial obligations.

Title III provides for Federal guarantees of loans made by private lenders to Indian families with sufficient income to support a home mortgage.

Conventional home lenders are unwilling to lend to Indians living on Indian reservations, especially on trust land because they cannot enforce a lien or market the house in case of default. Therefore, people who can most afford housing are less likely to have housing available to them.

The lack of housing for the people needed to work and manage new or developing reservation businesses has had an adverse effect on the economic development.

This guarantee program will remove the obstacles now present that are keeping lenders from making long-term mortgage money available on trust land.

The housing program to be established by this legislation, Mr. Chairman, is designed with needed flexibility to meet the specific requirements of our American Indian communities. The need for decent Indian housing is immediate, and I hope that, if we are in agreement on the principles involved, the details can be quickly resolved and a housing program adopted.

Mr. Chairman, that concludes my statement. Let me thank you for your prompt scheduling of the hearing and allowing me to present this testimony this morning.

Senator COHEN. Thank you very much, Senator Cochran.

Let me commend you for your statement and for the initiative you have taken in this, I think, particularly important area.

I understand that you have some scheduling problems and cannot stay. I have only one question. You pointed out that, in the existing programs, the unit cost for one house may run the size of $160,000 to $170,000 for the long-term funding of such a unit. Do you have any projective cost for a unit under this approach?

Senator COCHRAN. I do not have that figure with me, but I am advised that it would be substantially less; that some housing units can be constructed for $40,000 per unit. There is a serious problem with the HUD program in that, in many cases, the regulations require the houses be overbuilt.

It is a serious problem that would not be present in this housing program. There is a lot more flexibility permitted. The individual tribal units could develop their own housing program. I am convinced, from my examination of the practicalities of it, that we will end up saving a lot of money in the long run per housing unit and get more units constructed under this comprehensive program.

May I add that Senator Domenici, one of the cosponsors of this legislation is here? I mention his support and participation in the introduction of the bill. We are glad he has joined us.

Senator COHEN. Would you care to make an opening statement, Senator?

Senator DOMENICI. Yes, Mr. Chairman.

## STATEMENT OF PETE V. DOMENICI, A U.S. SENATOR FROM THE STATE OF NEW MEXICO

Senator DOMENICI. Mr. Chairman, I have a scheduling problem and I would very much appreciate your indulgence.

I have a statement that I would like to make part of the record.

Senator COHEN. Without objection, the full statement of Senator Pete V. Domenici will be made a part of the record.

Senator DOMENICI. This statement, basically, analyzes this program from the standpoint of its budgetary impacts. I am not going to read from it, but I think it would answer any problems that we might have from those who contend that, inasmuch as we are setting up a revolving fund and we have to come forth with some significant up-front money, we would be doing violence to the budget. I think it is clear to me that the program as outlined does not do that.

I will just take a couple of minutes and first compliment you. It is very difficult these days to find somebody who retains an interest and will find the time to take action on problems such as this. I commend you for that.

I want to thank the junior Senator from Mississippi. I am very pleased to be working with him on this. I am delighted that I was one of those who did not permit the administration's proposal to substitute a small pipeline for an Indian housing program. While I do recognize that they have some very good points with reference to this program in terms of long delays and the fact that it is very difficult to administer and many other things, I personally do not think that means we should abandon the effort. Quite to the contrary: the need

is enormous and it will never get solved unless and until we set it up and let it stand on its own for a significant period of time.

I join in the bill which basically does that. I think you ought to be concerned about the fact that the Bureau of Indian Affairs will indeed be the one managing it. I have no reluctance in saying that I do not have the greatest confidence in the Bureau of Indian Affairs. I think that the law ought to be written very rigidly with reference to their rule and I do not think they ought to have a great deal of latitude to administer this program as they have had for other programs for the Indian people. They ought to get on with it once we funded it and not be the cause of any delays or any technical obstructions.

I would be remiss if I told you that this bill will solve all the problems of Indian housing. They are difficult. The basic problem is that we do not have fee ownership land. The typical way of bringing private money in to finance housing just will not work.

On the other hand, some of the things that have to be brought together to make the housing project successful: water, sewer, and the kind of facilities that are attendant to it, we have to take care that these are constructed in a timely manner.

In the past, in has been almost miraculous that the project could find all those things meshing because they were not all in the same program. The Federal Government did not undertake them as a package. Sometimes you would have the money for housing and there would not be any water or sewer money and there would be something else that is necessary, such as an environmental impact statement that would have to come from some other agency. And so, frustration was rampant. This bill takes care of some of those; not all of them, but some of them.

The guarantee provisions should permit us once and for all to get out into the marketplace. We will see how many of our Indian people can afford housing, and whether the Federal guarantee will attract private financing, although they will not have the typical mortgage foreclosure ability because of Indian land status. The private response to the proposed guarantee will be a significant measure of success.

The Indian people in my State are well aware that, when we do this, there are some rather new burdens on them. Those who run Indian housing must run these as good housing managers run housing projects in order to avoid justifiable criticism. I think that we put some language in this clearly indicating that we want to help them learn how to manage collections. They will be expected to see that the housing is maintained and to collect where indeed people owe.

That is all part of seeing to it that the American people would continue to support Indian housing. Without that kind of change, those of us who support this will be subject to all kinds of criticism. We do not want to be accused of having created some kind of special entity that is not responsible as are other Americans for maintaining their legitimate share of costs as well as the responsibility of adequately maintaining the premise and the public property around it.

So I urge that we get on with this. I pledge to you, Mr. Chairman: I do not want you to think that you have to stand alone with your committee to get this through.

Senator COHEN. Even though I sit alone.

Senator DOMENICI. You will not be standing alone.

In fact, Mr. Chairman, after you have marked it up and taken whatever action you deem necessary to make it as workable as possible, I think we ought to pledge to the Indian people that we do not want the current uncertainty to continue. Contrary to this President's approach, we ought to take it to his people and see whether we cannot get them to understand that this deserves the support of the President and this administration.

It is not going to end up over a long period of time costing more money than we plan to spend now. Quite to the contrary: it is apt to spend less. But, more important, it is probably having a much better chance of working and producing reasonably priced housing for a number of Americans who desperately need it and to whom we have some special commitments. There is an opportunity built in to this new approach to cause our Indian people to obtain some skills and some attitudes that are not presently there. Without this kind of responsibility, self-sufficiency is not going to develop.

So I support the Indian Housing Act of 1982 and I will do everything I can to help you and others to get it through the Senate and to get some support from the White House if we can.

I thank you very much and, as I indicated, I believe that my statement is accurate from the standpoint of budgetary implications. I trust that it will be of help to you and to the committee. If there are those who say that we cannot afford this, I think we can. It will fit in the housing function rather easily from what I can tell.

Thank you.

Senator COHEN. Thank you very much, Senator Domenici and Senator Cochran also.

I would like to say that I commend you—both of you Senators—who, I think, fall within the spectrum called conservatives for bringing this kind of legislation before the committee even in spite of opposition which we will hear later, I am sure, from the administration about it being perhaps too expensive and we cannot afford it, we are concerned with budgetary deficits and, therefore, we will just delay it.

One of the most troubling aspects in this whole area is that whatever problem we have with the Indian housing programs, whether they are costly, expensive, hard to manage or whatever, certainly the solution is not to ignore it. What they have done is to eliminate the funding for fiscal year 1982, and tried to for fiscal year 1983. I suspect there will be very little, if any, money for fiscal year 1984.

It is tantamount to an attitude of benign neglect, in my judgment, if we simply do not deal with the issue but rather postpone it further or say that we are going to have a task force set up by OMB that promises me in March that we will have a report or even a proposal in 2 weeks: It is now the end of September and I doubt whether we will see any task force proposal coming before this committee before the Congress adjourns.

So, I want to commend both of you, and Senator Nickles and the others who cosponsored this legislation for being conservatives who are concerned, not only about budgetary matters, but about human problems and housing problems.

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With that, I will let both of you go. I know you both have pressing schedules.

[The prepared statement of Senator Domenici follows:]

PREPARED STATEMENT OF SENATOR PETE V. DOMENICI

Mr. Chairman, as Senator from New Mexico, I am very well aware of the positive economic and social impact of housing construction at our pueblos and on our reservations. New housing units provide training in new skills, better environmental health, and the possibility of further employment in the construction industry. As we all know, the Administration recommended the complete elimination of new construction commitments in its first budget request for fiscal year 1983. If we take that recommendation as a warning sign that the Indian housing program should be improved, then I believe that the bill before this Committee today, S. 2847, the Indian Housing Act of 1982, offers those improvements. Because many other witnesses will be discussing the mechanics of S. 2847, I will focus my remarks on the budgetary aspects of this bill.

Those who are aware of the crucial importance of the way in which deficit spending directly competes with the ability of this nation to invest in its own future are doing everything possible to reduce our huge deficits. I am one of those committed to deficit reduction. As Chairman of the Senate Budget Committee, my work reflects this belief and will continue to do so. Our borrowing to run the government can no longer absorb more than half of all available capital in this country as is projected for next year. The more capital the government uses, the less we have for personal and business investment. Too few people realize the role of government borrowing in keeping interest rates high. In essence, a new car buyer or a purchase of inventory (on borrowed money) is competing wtih the United States Government in the capital markets.

The new outlays that would be required by the enactment of the Indian Housing Act of 1982, would lead some to say that this legislation is not commensurate with our need to control deficits. I would say the opposite. While the early years of this new program will require more outlays it will not be very long before our main contribution will be to maintain the revolving fund. Please let me expand on this idea. As you will hear in some detail from your other witnesses, it is quite common to cite the figure of $170,000 for each new unit of Indian housing. The great bulk of this money is interest. Just as you and I pay about triple the price tag on a new house, interest rates do the same to Indian housing.

The beauty of the new approach in our bill is that we no longer borrow from our future to build a house today. Instead, we build a house and pay full costs thereby avoiding the interest costs that we have been carrying for 20, 28, and even 40 years. I believe it is these high interest costs that have generated opposition to Indian housing. The true benefits to Indian people have been overlooked as analysts have focused on interest costs. We propose S. 2847 as a mechanism that will continue to provide the needed housing while avoiding the associated interest costs. In order to do this, however, we need to increase outlays in the early years of this program to establish the necessary loan funds in a seed capital concept. This concept will give the government the added benefit of more participation from Indian home buyers as they pay their share based on income.

The reason that I support this increase in outlays to establish a revolving fund is simple, Mr. Chairman. We will be reducing the so-called "out-year" or future obligations on the part of the federal government. We will, therefore, be contributing to a sustained effort to keep the government out of the credit markets. This approach has more credibility than a one year moratorium on new housing that does not changes the structure of the program. Any budget analyst whose interest is in the long-term reduction of federal debt will see this approach as a positive one that no longer postpones the day of budget reckoning. It also has the value of meeting a basic promise of the federal government to the Native American people of the United States.

In addition to the budgetary benefits of S. 2847, I also see the value of simplication for all of us who work toward the goal of better housing for Indian people. I have met many times with Indian housing authority officials and elected officials who are trying to untangle the dizzying requirements from different agencies such as the Department of Labor's Davis-Bacon wage rates, Indian Health

Services' water and sewer connections, and Housing and Urban Development's myriad of construction steps, phases, and renegotiations.

The much simplified three part program of S. 2847 is directly tied to the financial situation of individual Indian families. Title I of this legislation would provide repairs for the poorest Indians or a new house when that makes more sense than trying to restore a deteriorated structure. Title II would encourage tribal governments to help the broad range of Indians (60%–70%) who can afford to pay a portion of their housing costs, and Title III will provide loan guarantees for those Indians whose income requires no subsidy, but whose building problem is the legal status of trust land.

From a budget point of view, the most expensive part of this housing program is the revolving fund which, at an average cost of $50,000 per unit, will run at about $200 million to build 4,000 units annually. The units to be repaired, at $10,000 per unit for 1,750 units will total $17.5 million; and the contingent liability for the loan guarantee program will be about $4 million per year. Total authorizations in the early years of this program are about $225 million per year, including $5 million for program administration. This amount will decrease as the revolving fund begins to receive payments from the Native American participants. Our largest unknown quantity at this point is the degree of participation and the success rate for collections. I am optimistic, however, that the Indian people of this nation are aware of these needed changes and will do all they can to keep their end of the bargain so that we can build 4,000 new units per year.

The Congressional Budget Office estimates 1984 authorizations at $132.5 million, 1985 at $243.0 million, 1986 at $292.5 million, and 1987 at $300.5 million. The corresponding outlays, beginning in 1984 are (in million of dollars) 27.7, 79.7, 158.6, and 252.8. The Congressional Budget Office points out that Title I is not a new program, but was funded at approximately $30 million in fiscal year 1982. Title II of our bill will essentially replace the Housing and Urban Development public assisted housing program which had an outlay of about $40 million in fiscal year 1982, including administrative expenses, and a budget authority of $703 million. Title III contains the authorization to guarantee loans on trust land up to $400 million.

The consolidated approach established by S. 2847, Mr. Chairman, will reduce the huge costs that are currently associated with Indian public housing. In fiscal year 1983, for example, the Senate Appropriations Committee estimates that 3,000 units will cost $8,380 per unit per year for 28 years. This equals $704 million over the 28-year period of $235,000 per unit! I am sure my colleagues will agree, we would rather fund the construction aspect of this cost alone which will be about three-fourths lower or between $50,000 and $70,000 per unit.

I am convinced, Mr. Chairman, that the Indian Housing Act of 1982, is in the best interests of the Native Americans as well as being in the best interests of responsible budgeting. Passage of this bill will confirm our commitment to Indian housing in a manner that invites more local responsibility and whose success will depend on the active participation of Indian people. This bill simplifies the very complicated housing process and requires planning that will clarify the true needs of American Indians now and in the future.

We are attempting to fill a need that cannot be met by the private sector due to the many factors that make pubelo and reservation life quite different from the typical market places for housing. Most Native Americans live in remote areas and have income and population bases that are insufficient to attract private capital. Further complicating their ability to provide their own housing is the complicated legal status of trust lands. I believe, Mr. Chairman, that S. 2847 is the right approach to meeting our legal and moral commitments to Native American people.

Before closing, Mr. Chairman, I offer a special thanks to Senators Cochran, Andrews, and Nickles and their staffs for their efforts on behalf of this bill and their understanding of the special housing problems of American Indian people. I also have a brief and technical change to Section 302 of Title III which I ask this committee to consider. It states that, "The authority provided by this section shall be effective only to such extent or in such amounts as are provided in advance in appropriation acts." This wording will put S. 2847 in conformity with the budget requirements for other loan guarantee funds.

In closing, I thank the Chairman and the Senate Select Committee on Indian Affairs for holding these hearings on such a vital and basic program, and I urge early action by the Committee to promote passage of S. 2847 by the 97th Congress.

Senator COHEN. We will begin our testimony with Mr. John Fritz who is the Deputy Assistant Secretary for Indian Affairs, accompanied by Hazel Elbert, G. Ronald Peake, and Philip Abrams, General Deputy Assistant Secretary for Housing.

Before you begin, perhaps you could just identify yourselves on that little sheet of paper so that the court reporter will be able to keep track of the testimony?

Mr. Fritz, why don't you proceed?

## STATEMENT OF JOHN FRITZ, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. FRITZ. Mr. Chairman, on behalf of the Department of Interior, we submitted 11 criteria that we believe are important for an effective housing program in a written format.

So, as a result, we would be happy to respond to any questions. I did bring Ms. Elbert and Mr. Peake with me who are the Bureau of Indian Affairs' experts on our own housing program.

We would be happy to respond to any questions you might have.

I would like to have my statement incorporated in the record?

Senator COHEN. Without objection, Mr. Fritz' statement will be incorporated in the record at this point.

[The prepared statement follows:]

PREPARED STATEMENT OF JOHN W. FRITZ, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the committee, I am here to present the views of the Department of the Interior on S. 2847, the Indian Housing Act of 1982.

The administration has spent some time now reviewing Indian housing program alternatives. In doing so, we have developed criteria which we believe are important to an effective housing program. I would like to share these criteria with members of the committee.

1. The program should facilitate the attraction of private capital to support Indian housing and not rely solely or predominantly on Federal funds or guarantees.

2. There should be a direct relationship between design and funding levels and actual Indian housing need. Relevant data on existing Indian housing should form the basis for such a program. Such data may be obtained from the census bureau.

3. There should be no Federal housing subsidies for Indian housing above a defined income level. Legislation should provide for such restriction on eligibility.

4. Federal income maintenance subsidies for Indian housing should be on the same par as housing subsidies for other U.S. citizens.

5. Since tribal lands cannot be attached, other forms of property and income flows should be used to guarantee programs. Every individual or tribe that has some assets should be required to pledge them as collateral to assure responsible program performance. Legislation should be explicit on this point.

6. Any Federal program should be designed with an objective of holding down the number of Federal employees to administer it.

7. Housing related infrastructure (e.g., sewer, water, and roads) should be supported out of the same appropriation as the housing program so that it is dealt with as a unified whole both by the executive and legislative branches. This does not preclude one agency from taking advantage of the expertise in another on a reimbursable basis.

8. Incentives should be built into the program to achieve production of maximum number of units at the least cost.

9. The program should require at least some minimal individual contributions from the owners or renters and provide incentive for proper maintenance and care.

10. The legislation and regulations should permit use of culturally appropriate standards and codes which could be waived altogether under special circumstances. Legislation should not impose unnecessarily detailed construction standards that may not be suited to particular areas, and provisions for waiver or adjustment to local conditions should be made.

11. The program should serve only Indians living on trust lands, since the inalienability of trust land is the key reason to have a special program. Other Federal programs are available to Indians who are poor or live in rural areas.

We believe that any legislation should address the above criteria to the maximum extent possible. In this way, we can insure that any Federal Indian housing program, whether established legislatively or administratively, will be structured to insure the maximum return for each tax dollar spent on legitimate Indian housing needs.

This concludes my prepared statement and I shall be pleased to respond to any questions you may have.

Senator COHEN. First, let me ask you whether you feel that this bill, S. 2847, as currently drafted, offers a practical alternative to the current HUD Indian housing programs?

Mr. FRITZ. My personal opinion is that, based upon my reading of the bill and the assistance that I have received—the technical assistance and advice from my staff—if the bill were drafted to better meet some of the criteria which are set forth in our written statement, I think this would probably provide a vehicle which would be a viable one from the Federal Housing program perspective.

Senator COHEN. Do you have any recommendations you would like to make to tailor this bill to those 11 criteria recommendations that you made?

Mr. FRITZ. No. I think what we would be willing to do is to sit down with my experts and the staff of the committees involved, and work on this and attempt to draft something that would more readily meet the criteria that we set forth.

Senator COHEN. What you are saying is that the concept of the bill as drafted as a concept is essentially a desirable one, a potentially viable one, or certainly a more viable one than the current Indian housing programs and, to the extent that changes have to be made, they should be made consistent with the 11 goals that you have set down and you would be willing to do that?

Mr. FRITZ. Yes, I think that fairly states my position.

Senator COHEN. Mr. Peake, would you have any comments you would like to make about that?

Mr. PEAKE. I agree with John Fritz.

Senator COHEN. You agree with Mr. John Fritz? All right. That was easy.

Would you explain to the committee how the current housing improvement program, the so-called HIP program under the general authority of the Snyder Act works in tandem with the housing programs?

Mr. FRITZ. Why don't I let Mr. Peake respond to that because I think that he can get into the technical applications of that.

Mr. PEAKE. If I understand the question, Senator Cohen, how our program works at present?

Our program is essentially a grant program that provides mainly for repairs, both to bring houses to standard condition and to what I would classify as emergency repairs to assist people to ward off the elements for health or safety factors until they can get more decent

housing. We do build some new houses around the country for those people who are not eligible for any other housing programs, or because family circumstances or isolation make it impractical for other programs to serve them. Essentially, that is the Housing Improvement Program as it stands now.

Senator COHEN. So, the bulk of the work of rehabilitation and improvement is not new construction?

Mr. PEAKE. That is correct, sir. About 70 to 30.

Senator COHEN. Seventy to thirty?

Mr. PEAKE. Seventy percent repairs to thirty percent new construction.

Senator COHEN. The fiscal year 1982 funding for that was $31 million?

Mr. PEAKE. Yes, sir.

Senator COHEN. How many housing units were built with those funds and how many will be rehabilitated? Would you still break it down in terms of 70 to 30?

Mr. PEAKE. I can give you the 1982 figures which will include actuals for three-quarters and an estimate for this final quarter.

We will do approximately 3,635 repairs and, combining downpayments and new housing, we will do approximately 530 new houses.

Senator COHEN. How does that compare with the demand?

Mr. PEAKE. The demand is in the 20,000 range. For our programs of repairs, the demand is approximately 20,000.

The new housing needs are approximately 40,000, so in overall terms of need our program is extremely small.

Senator COHEN. There is a demand for 20,000 on repairs and rehabilitation and another 40,000 for new construction?

Mr. PEAKE. That is right.

If the program could concentrate on repairs alone and, in essence, preserve the existing housing stock; if we had the kind of direction in terms of money and some of what you have in the bill to do that, you would in fact concentrate on preserving the existing housing stock and, as some people have put it, you would not have to attack a $10,000 or $15,000 problem with a $50,000 answer.

As you can see, at the rate of 3,000 or 4,000 repairs a year, in 4 or 5 years, you could significantly reduce the repairs necessary in Indian country.

Senator COHEN. Tell me: In view of the great demand and the rather small amount of money that is available, how do you allocate the money? What sort of system do you use?

Mr. FRITZ. Right now, under our HIP program it is done through a tribal priority system. The tribes put together the needs on a priority system and they request this in their allocation.

Senator COHEN. How does that differ from title 1 of this bill, S. 2847? Is the distribution of the allocation system any different?

Mr. FRITZ. Under this bill, from my understanding, I think, I can be corrected, but from my reading of it, the distribution of the funds pursuant to the proposed bill is through a need system as opposed to the tribal priorities system. The tribal priority system would be used, I believe, in the application process but not any further.

Senator COHEN. The first item in your list of criteria is:

**The program should facilitate the attraction of private capital to support Indian housing and not rely solely or predominantly on Federal funds or guarantees.**

How does the administration hope to achieve this?

Mr. FRITZ. The attraction of private capital to the Indian country, Mr. Chairman, in any program is terribly difficult.

I have examined this, not only in the context of housing, but in other programmatic areas. To be perfectly candid, I do not have an easy, readymade solution. I do not know that anyone does have from the standpoint of getting capital in.

What we are advocating is to attempt to get as much as we can possibly get into Indian country. There is no easy answer.

Senator COHEN. So, it is stated as a desirable goal, but there is no real mechanism that has been developed or devised, at this point at least, to translate that goal into a working reality?

Mr. FRITZ. That is correct.

Senator COHEN. How many positions would BIA need to administer S. 2847?

Mr. FRITZ. Our analysis indicates that this type of bill would require approximately 150 to 200 people.

Senator COHEN. My understanding is that HUD currently has some 300 full-time employees working solely on Indian housing programs.

It would seem to me that your sixth criteria of holding down the number of Federal employees would be met by the adoption of this approach. Would you agree?

Mr. FRITZ. If our numbers and the projected figures are that realistic, yes.

Senator COHEN. Are you confident those are realistic figures?

Mr. FRITZ. Like the good Senators who appeared earlier, sometimes I have questions about our ability to manage our figures accurately and adequately. So, given the professionalism that has gone into our housing program, I have more confidence in that than I do in most of our programs.

Senator COHEN. So, it is fair to say you are reasonably confident that 150 to 200 employees could handle the job?

Mr. FRITZ. Yes, Sir.

Senator COHEN. Your statement suggests that, inasmuch as tribal lands cannot be attached, other forms of property income flows should be used to guarantee the programs.

Are you familiar with section 205 of the bill which requires tribes to agree to attachment of tribal trust funds as a last resort in the event that the tribe failed to make payments?

Mr. FRITZ. Yes.

Senator COHEN. Does that provision meet your criteria?

Mr. FRITZ. I think it does. I do not know where we can draw any line on this.

Senator COHEN. This section 205 limits attachment to unobligated trust funds.

Do you think that there is some type of assurance that is needed from tribes that do not have unobligated trust funds?

Mr. FRITZ. I think we have to reach the assets. It is proverbial that you cannot get blood out of a turnip. I do not know how you can get

it out of some of the tribes who are critically short of any assets, any viable types of assets.

In that instance, it is going to be difficult.

Mr. PEAKE. While the bill provides for sanctions, as you know, these sanctions are triggered rather quickly in the process. For those tribes that have nothing—and, like John says, they have nothing—their land is in trust: So, let us face it, it is a difficult problem.

However, this bill addresses this problem in the manner that you have written the parts that trigger the sanctions.

In effect, you are saying that, if something does not happen in 3 months in terms of what the tribe's responsibilities are, we have to do something.

That is certainly not the total answer to your question, but it is a limiting factor that does set forth a new procedure that will minimize the kind of lingering and nagging problems of rental payments and other items that occur and that are difficult to answer or difficult to handle for those people or tribes that have limited or few assets.

So, in that respect it does minimize the problem.

It also provides for project agreements and up front responsibilities between the Government and the tribe or the tribal entity handling the housing.

Other than that, Senator, the problem is difficult.

Senator COHEN. Neither of you is suggesting that the housing programs ought to be limited to or serve only the Indians living on trust lands?

You are not suggesting that, are you?

Mr. FRITZ. My interpretation of that aspect—and, really it is a personal interpretation—is that any of our programs with respect to housing are obviously tied to the unique status of the trust lands. That, in and of itself, is not the only criteria.

I think that Indians can be served by these programs who live within the reservation boundaries as defined by the courts, the BIA, and everyone else within Indian country.

I believe that the focus of the program is obviously upon that unique status of the trust lands by virtue of their inalienability. However, I do not think this comment is solely focused upon Indians living upon the trust land.

Senator COHEN. Do you think it should be broader?

Mr. FRITZ. To the extent that it must cover our constituent groups.

Senator COHEN. Alaska native living on allotted lands?

Mr. FRITZ. Yes, sir.

Senator COHEN. Section 204 of this bill, S. 2847, which does not establish a maximum per unit cost of housing provides a tribe with the incentive to build as many units as possible for a given amount.

This is in contrast with the current HUD programs which have encouraged tribes to build the most expensive housing allowed.

The first question is: Does section 204 meet with your eighth criteria that "Incentives should be built into the program to achieve production of maximum number of units at the least cost?"

Mr. FRITZ. I think that it does from the standpoint that incentives are put in the bill which really encourage economies of scale.

I believe that is at least on the road toward meeting the criteria. I do not know how much further you can go down the road.

Senator COHEN. Do you believe there ought to be the incentive, however, to take a given amount and say that that money has to be used to build the most amount? It is like a Senator who is given a lump sum of money for salaries and he can spend it or she can spend it on 10 people and pay them at the top rate or they can employ 30 people at a much lower rate.

Mr. FRITZ. I think section 204 as far as the language is reflected in the bill is that type of an incentive.

Senator COHEN. It meets your eighth criteria then; which is one of your recommendations.

So, we have gone through at least 3 or 4 out of you 11 criteria that we have already met.

Mr. FRITZ. Yes.

Senator COHEN. Do you believe to try to put limitations on the cost of each unit is a generally desirable practice?

Mr. FRITZ. No.

Senator COHEN. You do not think so?

Mr. FRITZ. I think it has to be tailored to the needs of the people. The housing has to be tailored to the needs of the people who the housing program is attempting to serve.

If you put a false bottom, as it were, on the cost of the house, I think you will find everything coming in above that mark; whereas if you let the marketplace take charge of how the houses are going to be built reflecting the needs of the people, I think that you have a more true picture economically of the cost of the houses, that is if you build in the most economical fashion.

Senator COHEN. Do you think that the tribes will be able to construct rental housing under titles II and III of this bill?

Could they construct rental housing?

Mr. FRITZ. As was indicated to me, I think that under title III, utilizing the housing guarantee fund to guarantee mortgages would allow for rental housing to be built on the reservation.

Senator COHEN. Do you have any personal recommendations on ways to facilitate the construction of rental housing on Indian lands?

Mr. FRITZ. I have not given it a great deal of thought. I do not know whether Ron has?

Mr. PEAKE. You have to go further, Senator. I am not sure that the construction of rental housing or homeownership would make any difference in terms of the bill.

I think it would be possible under the conditions John says.

Whether it is desirable or not, I would answer you this way. I think there has been a lack of ability of tribes to house people with income, people that may require rental housing such as staff teachers. For example, the Bureau or Indian Health Service employees, where the Bureau or Indian Health Service do not or should not build the houses, there is that need for that type of rental housing.

In addition, there is a need for rental housing for the elderly. It serves a very good purpose. I believe that the bill, as written, would provide the opportunity for tribes to decide whether they wish to build that type of housing.

Obviously, if they get into the kind of housing for people with incomes, you would do that, I assume, under title III.

Senator COHEN. Mr. Fritz, in reference to your ninth point of these 11 points that you have submitted, sections II and III of this bill are based on the ability of the assisted families to pay. There is a minimum monthly payment required.

Title III is designed to assist families who, by definition, have the ability to pay a private mortgage. Title I is intended to be a subsidy or an outright grant.

I find it somewhat ironic that the administration states that a minimal individual contribution ought to be required while, at the same time, it suggests using community development block grant funds to develop Indian housing. The community development block grant funds is a grant program. Do you have any statement to make on that?

Mr. FRITZ. Not really.

I think the provisions of title I do impact title II. Titles I and II do, in fact, provide minimal individual contributions. There are incentives in the language; that is from my reading.

Senator COHEN. What I am saying is that the bill requires a monthly payment to be made under title II. And yet the administration has expressed its opposition to the bill saying: "We are going to put it in the community development block grant instead."

No payment is required there. You cannot have it both ways.

Mr. PEAKE. We must have missed that point.

Senator COHEN. Well, it is saying: "We do not like this program because we want people to pay some minimal amount of money," and this bill provides that. What they recommend as an alternative is to "put it over in your community development block grant," where there is no payment requirement.

Mr. PEAKE. It is a contradiction in terms.

Senator COHEN. I recognize Senator Schmitt.

## STATEMENT OF HARRISON SCHMITT, A U.S. SENATOR FROM THE STATE OF NEW MEXICO

Senator SCHMITT. I apologize to you and to the witnesses and other members of the committee for being delayed.

I was at the Defense Appropriations Subcommittee markup. We still need to find another $300 to $400 million and we will be within our allocation.

Mr. Chairman, if I may, I would like to begin with an opening statement. Then I will have a few questions for the witnesses.

I want to particularly thank you for the opportunity to participate in the hearing this morning on S. 2847, the proposed Indian Housing Act of 1982.

As chairman of the Senate Subcommittee on Rural Housing and Development of the Banking Committee, I share your commitment to improve the housing conditions and access to mortgage credit on Indian reservations.

In monitoring the performance of the Federal housing programs on tribal lands, I recognize the necessity of making programmatic changes to improve housing services in perhaps the most needy of all rural areas.

The Department of Housing and Urban Development has made changes in the existing housing programs to reduce the cost of housing, improve the coordination of agencies administering the Indian services and to reduce unnecessary regulations.

While these initiatives will improve the delivery of Indian housing services, more extensive programmatic changes must be made in order to effectively meet the demand for adequate housing on reservation lands.

Your consideration of the Cochran bill represents an unusual opportunity to combine the expertise of two committees in an area of common concern. The Committee on Banking, Housing, and Urban Affairs can lend its housing expertise and its continuing desire to further simplify and streamline the programs under its jurisdiction in order to develop a more efficient and effective means of providing housing and community development services. For example, the Housing and Community Development Amendments of 1981 included revisions that substantially reduce the regulatory and administrative burdens of entitlement grantees participating in the Community Development Block Grant by the following:

First, refining the process for a program development and HUD approval;

Second, reducing the required submissions to HUD;

Third, expanding eligible activity requirements.

The committee also made similar simplifications in the Urban Development Action Grant program.

The committee has begun also to recognize some of the impediments in providing housing assistance on trust lands and has taken steps to accommodate these unique conditions. Difficulties in coordinating the activities of the BIA and the Indian Health Service with the HUD Indian Public Housing program often has resulted in slowing the development of approved housing projects and, in some instances, resulted in units being constructed without either the necessary roads, water and sewer or other infrastructure facilities.

In order to circumvent these unnecessary and costly delays, we gave HUD the authority to use housing development funds for the installation of necessary infrastructure facilities where normal channels were stymied.

I cannot emphasize enough how important that particular authority is in areas like New Mexico and in most other extremely rural portions of the country.

In another problem area, the inability to transfer title to the land has been an almost insurmountable obstacle to homeownership on trust land.

In this year's proposed authorization legislation, the committee took action to enable eligible Indian home buyers to obtain financing or housing on trust land through the FHA insurance program.

The committee has also acknowledged the capacity of States to deal comprehensively with their own housing and community development needs and has successfully implemented programs that leverage State involvement.

Moreover, the Indian Community Development Block Grant provides grants to Indian communities to fund a wide-range community development activity. While the law states the general objectives

which the block grants are designed to meet, spending priorities are determined by tribal governments.

Despite 18 years of HUD and BIA housing programs, the American Indians suffer from the worst housing conditions of any U.S. citizen.

Of the 165,000 estimated Indian families living in reservation areas, 28,600 families have no housing of their own. Forty-four percent of all existing Indian units are in need of repair and another 23.5 percent need replacement.

In my own State of New Mexico the drastic need for Indian housing is demonstrated by the fact that applications for 790 units have been submitted to HUD during this fiscal year, although only 839 units can be funded across our 4 State region.

This opportunity for cooperation between our two committees will enable us to share expertise and develop comprehensive answers to the major problems which face Indians on tribal lands. We must work together to make mortgage credit available on Indian reservations and to provide housing assistance to those with the most dire housing needs in the country.

Again, I would like to thank you, Mr. Chairman, for the opportunity to discuss the merits of the legislative proposals before us and I thank our witnesses for joining us.

I wonder, Mr. Fritz, if you could tell me: Does the legislation as you studied it and as it is before us, provide any specific income eligibility limit allowing individual Indians or IHA's to determine eligibility for housing programs? Does not this lead to inequities?

Mr. FRITZ. I could not get the last part of it.

Senator SCHMITT. By allowing the individual Indian housing authorities to determine eligibility for housing programs, does not this lead to inequities between reservations and between authorities if there are no income eligibility limits?

Mr. FRITZ. I would not think that it would.

Senator SCHMITT. Is it your understanding that the legislation does not provide any income eligibility limits?

Mr. FRITZ. That is not correct.

Senator SCHMITT. How would you interpret the legislation?

Mr. PEAKE. Senator Schmitt, the legislation provides for broad categories and, in fact, states that if one is eligible for one category, they are not eligible for another category.

That is an income limit of sorts. It is not stated in terms of numbers but, as I read the legislation, it says that those people who are eligible for title III are not eligible for title I and II. Those people eligible for title II are not eligible for title I.

With the concept of the bill, again as I see it, to do a comprehensive program to handle housing for a wide range of income segments in Indian areas or on reservations, I do not believe that it necessarily indicates that you would have inequities. The system in Indian country does not quite work that way.

I do not think that it is any different than any other place and the local people determining local income and local conditions would have varying income limits, I assume, under this bill, as happens anywhere inside or outside Indian areas.

Senator COHEN. There are no means tests for any of the Indian housing programs, are there?

Mr. PEAKE. Not really.

Senator COHEN. And, as a matter of fact, what happens among Indian tribes is, if anything happens, they get the most sophisticated group or tribes who have resources and people who come here frequently to testify, they are the ones who grab up the money, is that not true?

Mr. PEAKE. Yes.

Senator COHEN. It is the same with small communities who have to compete against larger cities for applications, so-called "grantsmanship", they are the ones who have access to the Federal money because they have the planning staffs, they have the assets and the resources to do that.

What this bill is designed to do is to change that.

So, there ought to be some kind of a means test so that it is not just the wealthiest groups or the most sophisticated or the best organized, but there ought to be some means employed so that the most impoverished groups have an opportunity.

Mr. FRITZ. The application process puts those who have received housing in one year on a lower priority than those tribes or housing tribal authorities who were not on that previous year's list. The ones who did not receive the funds would be moved up on a higher priority, according to my reading of the bill.

Senator COHEN. You agree. Essentially, it would be the objective of what the bill is trying to do. The ones who did not receive the funds would be moved up to a higher priority.

Senator SCHMITT. Mr. Chairman, the first means test, as I understand it, says that it is a locally determined means test, not one that we would try to apply on a national basis.

Mr. PEAKE. Let me explain how I understand the bill, or what the bill says and, maybe, we can fit that together.

The bill says that, if you are eligible to title III—in other words, if in fact you are eligible to receive a guarantee you are not eligible for titles I and II——

Senator SCHMITT. Excuse me for interrupting, but that eligibility is going to be determined by the local Indian housing authorities, is that not correct?

Mr. PEAKE. No. In that break-off point, that would be determined by the willingness of the lender to lend depending on your credit worthiness and the regular standard procedures one uses in the mortgage market.

Mr. FRITZ. It is actually a local decision based on the commercial lending market.

Senator SCHMITT. You may proceed for that part.

Mr. PEAKE. The difference between title I and title II would probably be set, as I read this, or the eligibility between title I, the lowest income group, and title II would probably be set locally.

Senator SCHMITT. Set where?

Mr. PEAKE. Set locally.

So, we have two different forces at work setting the dividing lines.

Senator SCHMITT. There is no allocation formula relative to the availability of grants; is that correct?

Mr. PEAKE. The allocation formula for title I?

Senator SCHMITT. Yes.

Mr. PEAKE. I do not believe so.

Senator SCHMITT. Is there one implicit in the legislation?

Mr. PEAKE. Only the need criteria, as I see it. Obviously that is a guide for allocating money.

Senator SCHMITT. Do you think there should be specific requirements for the owner or tenant contributions? As I understand it, there are none in the bill. Do you think there should be?

Mr. PEAKE. Only on title I. In title I, which essentially changes the legislative base of the present housing improvement program from the Snyder Act to this bill. It is a grant program. I would use the term as being essentially a grant because that is the nature of the title itself and to those you are intending to serve.

But you do provide for the tribes to set or collect the minimum payment for insurance, and maintenance. You do provide that. But the nature of the title itself indicates that families would not be able to pay more than that.

As for the other titles, that does not apply. The other titles are rather specific in terms of the requirements on the individual and their ability to pay. This is true in title II and title III where the economic rent is called for.

Senator SCHMITT. What is your opinion of the provisions in the legislation dealing with building codes?

Mr. PEAKE. From my own experience, I think that the idea of putting the minimum standards into law make sense. I do not see anything wrong with that. I truly do not.

And, with the provisions for some waiver in instances where size is a question, such as in Alaska, it does not cause a problem, as I see it, in administering a housing program at the Federal level.

Senator SCHMITT. Will moneys under this legislation, if enacted into law, be available for water and sewer infrastructure facilities?

Mr. PEAKE. The bill, in title IV, calls for the participation of the Indian Health Service. I do not believe this bill specifically says that the money that they would require to provide water and sanitary facilities would be appropriated under this act.

I would only comment to you that obviously the two agencies go to the same congressional committees, both authorizing and appropriations committees.

Senator SCHMITT. I understand that. Two agencies trying to cooperate often find it very difficult. For rural housing programs administered by the Farmers Home Administration, the Banking Committee suggested that some of those moneys be specifically available for water and sewer and infrastructure improvement. Many worthwhile FmHA projects have not been completed because of overly restrictive codes and an inability to coordinate agency services. Even though the housing was needed, the projects did not meet the prescribed standards so the houses were not built.

Mr. PEAKE. That is a point. The question of whether one should provide the Indian Health Service money through this bill is a judgment matter that requires careful consideration.

Mr. FRITZ. That was one of our criteria.

Senator COHEN. There are three agencies involved in the current system. This reduces it at least to two.

Senator SCHMITT. Is the legislation adequate to attract private capital for the Indian housing program?

Mr. PEAKE. I think it is a good attempt. Obviously the markets are difficult now, regardless of the kind of guaranty. But this certainly would provide the avenue. Whether lenders would lend or not, I am not sure.

Senator SCHMITT. Are you familiar with the experience of the CDBG and FHA programs with respect to Indian housing?

Mr. PEAKE. Yes.

Senator SCHMITT. What is your impression of its success or failure in attracting private capital?

Mr. PEAKE. As to the community development block program, I do not believe it attracts private capital, although it might as additional funds to stretch the Federal dollar. It is certainly possible, and hopefully that will happen. But I do not think that is the intent.

As for the FHA—meaning, I assume, Federal Housing Administration—is that right?

Senator SCHMITT. As it applies to Indian housing.

Mr. PEAKE. Its use is limited to nonexistent on trust land.

Senator SCHMITT. If I am not mistaken, we just recently made it available. No, excuse me. That is in pending legislation. We will get into that with the HUD officials here in a moment.

Would the loans made under this BIA guaranty program proposed in the legislation have the same degree of acsess to the secondary market as FHA-insured loans do?

Mr. PEAKE. The way I read the bill it would. I think I would put a caveat in my answer and tell you that possibly more discussion with the Federal Home Loan Bank Board officials would be necessary or with the Ginnie Mae or Fannie Mae officials.

Obviously the bill is still a bill, and we have not done that. But the way it reads with standard clauses and provisions for guarantees for the use of the credit markets appear to be there. Whether that would be acceptable to the Federal Home Loan Bank Board or Ginnie Mae or Fannie Mae, I am not certain.

Senator SCHMITT. We will try to find that out.

Thank you very much. I will have other questions for the record.

Senator COHEN. Without objection, those questions and the answers will be placed in the record at this point.

[Subsequent to the hearing the following exchange of correspondence was received for the record:]

HARRISON SCHMITT
NEW MEXICO

COMMERCE, SCIENCE AND TRANSPORTATION

APPROPRIATIONS

ENERGY AND NATURAL RESOURCES

INDIAN AFFAIRS

INTELLIGENCE

United States Senate

WASHINGTON, D.C. 20510

October 21, 1982

3738

Honorable John Fritz
Deputy Assistant Secretary
Bureau of Indian Affairs
Department of the Interior
Washington, D. C. 20240

Dear Mr. Fritz:

In response to the hearing held on S. 2847, the Indian Housing Act of 1982, I am submitting the following questions to be answered for and included in the record.

In the Housing Improvement Program what level of funding is utilized for rehabilitation? What is the average amount of a rehabilitation grant? How much of the total funding is spent on plumbing repairs and improvements? How much of the funding is used for the construction of single family homes? What is the average cost per unit? What is the average amount of the grant? What building code must be adhered to? How does the ratio of the need for rehabilitation and new construction compare to actual program activity?

Your comments on specific aspects of S. 2847 would assist us in understanding and evaluating this legislation. In addition to responding to the specific questions listed below, I would like you to identify means by which this legislation could be made more consistent with the Administration's criteria outlined in your testimony.

- What level of administrative expense would you associate with the implementation of this program? Is this included in the current cost estimates for the program? Should limitations be placed on administrative costs?

- When do you feel this program could actually become operational? What start up time do you anticipate?

- Title I of S. 2847 requires that funds be distributed to tribes on the basis of their ranking in a housing need priority system. If assistance is received in one year, they would lose their ranking for the next. Since there is no guarantee that a tribe will receive continuous funding, will this result in difficulties in tribal planning activities? Would you please comment on the effect of this system, as opposed to that achieved through an allocation formula?

- Should the income of an individual be taken into account in determining the amount of a grant given through Title I?

- Is it possible to construct and finance multifamily housing under Title II of S. 2847? Can you explain how it would work?

John Fritz
Page Two

- Do you feel that development caps lead to the overbuilding of homes? Is a mandate to build the maximum number of homes adequate to ensure that the effect of Federal dollars is maximized? What do you feel is a reasonable limit?

- Since this legislation does not address any mechanisms for dealing with losses to the revolving fund as it is described in Title II, how will we avoid the difficulties that have been encountered in the 502 program that is administered by the FmHA? Each year FmHA comes to Congress in order to receive an additional appropriation for losses and interest credit costs to the Rural Housing Insurance Fund. Since these losses are difficult to anticipate, FmHA usually ends up borrowing from the Treasury. These costs have never been included in evaluating the programs, but have resulted in a substantial loss to the Federal government.

- Although this legislation attempts to tie tribal assets to housing loans in order to assure responsible program performance, how does it deal with tribes that don't have trust funds? If only 10 percent of all tribes have trust funds and the rest are exempt from the required attachment, isn't that unfair?

- Have you considered any alternative means of ensuring responsible program administration and prevention of loss to the revolving fund?

- Would multifamily housing be eligible under Title III, or is this title limited to single family housing?

- Does Title III of S. 2847 provide interim financing for new construction of single family homes?

- Would BIA consider having the ongoing obligations of the HUD Indian Housing program transferred to their office so that all the Indian programs could be administered under the same roof?

I look forward to your responses to these questions and hope that we can continue to work together to develop a viable and effective program for Indian housing.

Sincerely,

Harrison H. Schmitt

Harrison H. Schmitt

HHS:dmn

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

IN REPLY REFER TO:
BCCO 3798

NOV 18 1982

Honorable Harrison H. Schmitt
United States Senate
Washington, D. C. 20510

Dear Senator Schmitt:

Thank you for your letter requesting further answers on S. 2847, the "Indian Housing Act of 1982".

Before providing the specific answers to your questions, we wish to emphasize that this bill is not an Administration bill, and in fact, the Administration has not testified favorably on the bill. Recognizing our position, the following are our answers to your specific questions:

Question: In the Housing Improvement Program what level of funding is utilized for rehabilitation?

Answer: Approximately 60% of the funding is used for rehabilitation.

Question: What is the average amount of a rehabilitation grant?

Answer:

| | | |
|---|---|---|
| Cat A | Non-standard Repairs | $ 1,250 * |
| Cat B | Repairs to Standard | $10,600 * |

*(1982 Est.)

Question: How much of the total funding is spent on plumbing repairs and improvements?

Answer: We do not carry statistics by specific repairs, i.e. plumbing, carpentry, electrical, etc.

Question: How much of the funding is used for the construction of single family homes?

Answer: Approximately 40% of the funding is used for construction of single family homes.

Question: What is the average cost per unit?

Answer: The average cost to the HIP is $33,700 (1982 Est.). There are other participating activities in some areas but we do not keep track of those amounts.

Question: What is the average amount of the grant?

Answer: $33,700 (1982 Est.)

Question: What building code must be adhered to?

Answer: Applicable local building codes. If there are no applicable codes, County or State codes are to be used as a guide.

Question: How does the ratio of the need for rehabilitation and new construction compare to actual program activity?

Answer: The HIP concentrates on repair by policy. For 1982 we estimate doing some 3,600 repairs and 630 new units. The 1981 Housing Inventory shows a need for some 60,000 new units and approximately 32,000 repairs.

SPECIFIC ASPECTS OF S. 2847

Question: What level of administrative expense would you associate with the implementation of this program?

Answer: $5,000,000.

Question: Is this included in the current cost estimates for the program?

Answer: Yes.

Question: Should limitations be placed on administrative costs?

Answer: The protections in Title IV seem sufficient.

Question: When do you feel this program could actually become operational? What start up time do you anticipate?

Answer: Six months to a year following appropriations. Various Titles would phase in at different times.

Question: Title I of S. 2847 requires that funds be distributed to tribes on the basis of their ranking in a housing need priority system. If assistance is received in one year, they would lose their ranking for the next. Since there is no guarantee that a tribe will receive continuous funding, will this result in difficulties in tribal planning activities?

Answer: We assume you are referring to Title II, section 203. It appears to make a great deal of sense to distribute housing construction money on the basis of need. It does not seem that tribal planning would have any more difficulties than they would have under present housing programs, and probably will have less in dealing with approvals under this bill.

Question: Would you please comment on the effect of this system, as opposed to that achieved through an allocation formula?

Answer: It is difficult to compare the intended workings of the bill with an allocation formula. Unless we know the allocation formula to which you are referring, obviously any attempt at comparisons would be inappropriate.

Question: Should the income of an individual be taken in account in determining the amount of a grant given through Title I?

Answer: Yes.

Question: Is it possible to construct and finance multifamily housing under Title II of S. 2847? Can you explain how it would work?

Answer: Yes. It would work on the basis outlined in section 220 of the bill.

Question: Do you feel that development caps lead to the overbuilding of homes?

Answer: Yes.

Question: Is a mandate to build the maximum number of homes adequate to ensure that the effect of Federal dollars is maximized?

Answer: Section 204 provides that among other things, the project agreement is to set out the minimum housing units to be developed with the funds allocated. It is the intent of this provision to provide an incentive to tribes to develop as many units as possible, as inexpensively as they can, within the overall minimum standards. If a tribe can build more than the minimum with the amount of money available, then they are encouraged to do so. This appears to be a sensible way to maximize the number of homes to be built.

Question: What do you feel is a reasonable limit?

Answer: Reasonable limits vary a great deal due to the geographical differences encountered in administering a nation-wide Indian housing program. What is reasonable in one place is not reasonable in another.

Question: Since this legislation does not address any mechanisms for dealing with losses to the revolving fund as it is described in Title II, how will we avoid the difficulties that have been encountered in the 502 program that is administered by the FmHA? Each year FmHA comes to Congress in order to receive an additional appropriation for losses and interest credit costs to the Rural Housing Insurance Fund. Since these losses are difficult to anticipate, FmHA usually ends up borrowing from the Treasury. These costs have never been included in evaluating the programs, but have resulted in a substantial loss to the Federal government.

Answer: This legislation does not envision a loan program. Therefore, the revolving fund in Title II is not comparable to the 502 program administered by the FmHA.

Question: Although this legislation attempts to tie tribal assets to housing loans in order to assure responsible program performance, how does it deal with tribes that don't have trust funds?

Answer: For those tribes that don't have trust funds, we assume that the "due process" sections and other sanctions will apply.

Question: If only 10 percent of all tribes have trust funds and the rest are exempt from the required attachment, isn't that unfair?

Answer: Although the sanction concerning trust funds is for both individual and tribal trust funds, and therefore percentages are much higher, the issue of fairness does not seem to rest on whether one does or does not have trust funds, but rather on how one meets one's obligations relative to one's income or assets.

Question: Have you considered any alternative means of ensuring responsible program administration and prevention of loss to the revolving fund?

Answer: No.

Question: Would multifamily housing be eligible under Title III, or is this Title limited to single family housing?

Answer: Yes, multifamily housing would be eligible and would probably be an important element under this title.

Question: Does Title III of S. 2847 provide interim financing for new construction of single family homes?

Answer: No.

Question: Would BIA consider having the ongoing obligations of the HUD Indian Housing program transferred to their office so that all the Indian programs could be administered under the same roof?

Answer: This is a policy question that would have to be carefully considered should such a proposal be made. It would seem to us, however, that the ongoing obligations of HUD should remain with HUD.

We hope our answers to your additional questions on S. 2847 will be of help. We continue to analyze the legislation and now find that S. 2847 in its present form is more consistent with many of the criteria in our testimony. Naturally, we continue to be committed to a sensible, workable, and more cost effective way to build Indian housing and hope that interested efforts, such as yours, will achieve this goal.

Sincerely,

/s/ [illegible]

[illegible] Deputy Assistant Secretary -
Indian Affairs (Operations)

cc: Carol Woodcock, Legis. Asst.
Off. of Senator William S. Cohen

Senator ANDREWS. I appreciate the opportunity to be here, at least a little while, to hear these comments on the bill that I am cosponsoring.

My colleague, Senator Cochran, has already explained the great need for decent housing for Indians and what we hope to achieve with this legislation.

I will attempt to keep my remarks brief so that the committee can hear from the witnesses.

I certainly want to say that I firmly believe that it is time for a change in the current Indian housing program, a change away from substandard, poorly constructed, and tremendously costly houses. I do not care where you go on reservations in North Dakota, but some of the most grievous examples of cost to the Government and no benefit to the individual can be seen on any one of these reservations.

We think we need a change. I think this legislation will benefit everyone. Housing will cost our taxpayers much less, as Senator Domenici explained, and will enable the tribes to respond to the needs of their members. It will get more housing out there and enable Indians to obtain mortgages even with the trust status of their lands.

There may be quite a bit of discussion here today on the availability of mortgages and mortgage insurance programs such as VA and FHA for the Indians who have trust lands, and there will be some conflicting statements on these issues. There always are.

All I know is that lenders are not lending money in North Dakota to Indian people for housing. The lenders are in a bind because of the trust status of the lands. Should the Indian default, the lender in fact cannot foreclose and sell the house and recoup any loss.

I was appalled to learn that our native Americans who served their Nation in the armed services, including those who received the Congressional Medal of Honor, are not considered for VA housing programs because of the trust status of their lands.

Rather than go over a litany of the problems with the current programs, I just want to say that it is time we did something. We have been waiting for months for the administration's Indian housing task force to come up with a plan for Indian housing. To my knowledge, Congress has yet to receive the plan. Have you sent one up yet?

Mr. FRITZ. I am not a member of that interagency task force. From what I understand, a proposal was submitted to the Office of Management and Budget in April. At this point, it is currently under discussion.

Senator ANDREWS. But it was supposed to have been submitted in April; is that right?

Mr. FRITZ. It was.

Senator ANDREWS. It was submitted to OMB, and it is rattling around down there——

Senator COHEN. In the bowels of OMB.

Senator ANDREWS. We have talked about the bowels.

I think it is pretty well bound up over that. Maybe we can give it the proper dose of what it needed to improve it. However, we have not received that plan. That is the point I want to make. So we went to the Indian people and asked for their input as to what the problems are and what the solutions could be. The result, of course, of this effort on

the part of Congress and the native Americans is this bill that is before us. I think it is a pretty good bill.

Therefore, I would hope that with the comments we hear today we can make this bill an even better piece of legislation, one that will insure a good housing program and good, decent housing in Indian country.

However, Mr. Fritz, can the BIA handle an Indian housing program like the one proposed in this bill? I think we are interested in having you respond.

Mr. FRITZ. Looking at the provisions of the bill and given our experience really in running a program that essentially is title I under the bill, it can be done. We are going to have to put in a professional staff that could manage a program of this magnitude. We do not have it currently. However, if in the wisdom of Congress the bill passes and is signed into law by the President, we obviously will have to implement that law.

With respect to needs on the part of the Bureau, the miscellaneous provisions of title IV are going to be necessary inclusions obviously in order for, in my opinion, the Bureau to assume responsibilities for its actions.

Senator ANDREWS. Mr. Peake is handling an embryonic housing program that you have down there now, as I understand it. What is your feeling about being able to handle it?

Mr. PEAKE. I think with the provisions of title IV and, as John says, with an effort to get a professional staff, combining those directions with the professional staff, the Bureau can do the job. I would comment to you that the way the bill is written, much of the Bureau's responsibility outside of protecting the Federal investment and inspection—two very important items—the bill is carried out by the tribes and housing agencies.

Mr. FRITZ. It is at a local level, Senator.

Senator ANDREWS. Would not it be easier for everyone if BIA and IHS were the only agencies responsible for an Indian housing program, especially since they come before the same Appropriations Committees in both the Senate and the House? Have not there been a lot of problems with the triagency when you have HUD involved in this overall agreement?

Mr. FRITZ. I think the coordination for uniform and consistent application by the housing authorities that have been with us in Indian country previously have run into problems. I do not know whether it could be better handled if it were in the hands of two agencies or not. Presumably you would get the efficiencies that come about by only having two appropriations committees with the same substantive committees. Presumably that efficiency would be there.

Senator ANDREWS. I also recognize the problems that you have until this is disgorged from OMB because you really cannot comment on it. I have one final question. How long would it take this BIA to gear up and begin delivery of housing if this bill becomes law?

Mr. FRITZ. Title I is effectively in place right now. If the bill were to become law, we would have variances on titles II and III. Depending upon how fast we could get the regulations up and operational to implement the law, looking at all of the ramifications that go with

establishing and implementing a major program of this nature, at a minimum it probably would be 6 months to 1 year on titles II and III.

Senator ANDREWS. Given the track record of a lot of these other programs, that is the speed of a greyhound.

I appreciate your giving me the time, Mr. Chairman. Let me say that I appreciate your candor in responding to these questions, Mr. Fritz.

Senator SCHMITT. I have a followup question. Would your recommendation be that we have a transition period built into the legislation?

Mr. FRITZ. I think, if I recall the reading of this, that you do. In effect you postpone the appropriations 1 year. As I read this I think if it were to pass and the President were to sign it that we would begin gearing up in 1983, and the heavy appropriations for the construction and so forth would begin in 1984. I believe that is what is contemplated.

Senator SCHMITT. There would be a tendency to defund the existing programs at a faster rate as you gear up and take on the additional responsibilities.

Mr. PEAKE. That may be so.

Senator ANDREWS. Not if we administer the proper medicine to Mr. Stockman.

Senator COHEN. I anticipate that you are going to suggest that there is a duplication. This bill would duplicate existing programs available to Indians through either FHA or VA. The question I wanted to ask Mr. Peake before he leaves is this: What is the current situation? Assuming that there was an FHA guarantee on a project and assuming that there was an FHA guarantee on a project and assuming that there was a default, how would the FHA enforce that?

Mr. PEAKE. How?

Senator COHEN. They have to go to a tribal court to get a judgment, do they not?

Mr. PEAKE. Yes; the problem with using FHA now—well, there are a lot of problems with using it. It is based on the enforceability of the lien and the marketability of the house.

Senator COHEN. Where do they have to go to get the enforcement?

Mr. PEAKE. To the court of competent jurisdiction, which in Indian areas is mainly the tribal court, and in some areas it is CFR court.

Senator COHEN. Does that have a chilling effect on FHA or VA to be forced to go in to get a tribal court judgment to throw somebody out of a house?

Mr. PEAKE. I cannot speak for them, but I can speak for the lender. If it were me, I would not lend any money.

Senator COHEN. As a matter of fact, even assuming they get a court order in favor of the lender and they get a judgment of eviction, can they attach the land?

Mr. PEAKE. No, sir.

Senator COHEN. It is still tribal trust land.

Mr. PEAKE. Yes; it is not alienable.

Mr. COHEN. Mr. Abrams, at long last we come to you. I am sorry to keep you waiting so long at the table.

## STATEMENT OF PHILIP ABRAMS, GENERAL DEPUTY ASSISTANT SECRETARY FOR HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Mr. ABRAMS. I have a statement that I think is important. I think it touches on most of the subjects that you raised. Although I would normally summarize it, I think in this instance it is more important to read it.

Senator COHEN. You may proceed however you feel most comfortable.

Mr. ABRAMS. The Department of Housing and Urban Development provides assistance in both the development and management of housing in Indian and Alaska Natives areas pursuant to the U.S. Housing Act of 1937, as amended. The HUD Indian housing program is administered by about 170 Indian housing authorities.

Currently there are over 45,500 units of HUD-assisted housing, either homeownership or rental housing, occupied by Indian families and another approximately 13,600 units in the development pipeline. These pipeline numbers include 2,589 new units provided to HUD in fiscal year 1982 with the $18.96 million in Indian housing funds. My staff is working diligently to improve the current program. Positive steps have been taken to reduce development costs and to improve management.

In my testimony to your committee in March, I indicated that the Federal budget submitted by the President to Congress does not propose funds for Indian housing for fiscal year 1983 because of the need to develop a more effective and less costly Indian housing program with less Federal administration. I also indicated that an OMB established task force on Indian housing was actively reviewing a range of options for a better way of delivering Indian housing, including mechanisms which will provide greater flexibility for tribal leadership to operate the program without excessive Federal red tape or unnecessary Federal involvement.

My comments on S. 2847 are offered in a constructive way, and I hope to demonstrate that some actions are already underway to address your concerns about Indian housing.

The bill relies on thrifts and insurance companies to provide mortgages. The changes in the capital financing markets have increasingly brought reliance in the secondary markets to the nonconventional real estate lenders and the buyers and purchasers of mortgage backed securities, either Fannie Mae or Ginnie Mae, as well as pension funds that are becoming interested in real estate investments at this point.

Senator COHEN. Are you suggesting that there is an interest in FHA and VA to secure these loans on Indian lands?

Mr. ABRAMS. Yes, I am suggesting that. That is why the administration proposed the language that is in the Senate authorization bill this year which would not require the ability to gain control over the land for loans made to Indians on Indian trust lands. It is specifically with the intention of making FHA available that that was proposed by the administration. We are delighted that the Senate Authorization Committee has included it in their bill this year.

Senator COHEN. How many loans are made through FHA and VA to Indian lands?

Mr. ABRAMS. Under the current law, as Mr. Peake said, if there are any, none of us are aware of them.

Senator COHEN. How is this a duplication of existing programs then?

Mr. ABRAMS. We have the FHA program, and I would question whether you could set up a loan guarantee program similar to FHA's or VA's in 6 months, 1 year, or longer. I do not think that the staffing requirements and all of the other requirements that are necessary to set up that kind of program are anticipated in the projected figures.

However, what I am suggesting is that you have an existing program. It does not work on the reservations now because of the statute. If you change the statute, the program will work, and FHA would be committed to making that insurance program work on the reservations.

If the other elements of S. 2847 are more desirable in the opinion of Congress than some of the suggestions I am going to make, that is fine. There is no reason why they could not be combined with the existing FHA program.

We also believe that the proposed BIA loan guarantee program would require expensive startup outlays—in excess of the $13 million authorized for the establishment of an insurance fund—as well as substantial extra Federal personnel skilled in housing insurance, both in BIA headquarters and the BIA field structure. These additional Federal expenditures would not be required if the FHA and VA insurance programs now in effect were used.

Further, HUD proposed legislation to improve the ability of FHA to meet the housing needs of Indians. As I have said, his proposal has been incorporated as section 320 of S. 2607, the HUD authorizing legislation reported out of the Committee on Banking, Housing, and Urban Affairs.

Under S. 2607 HUD could insure a mortgage covering a 1 to 4-family dwelling executed by a member of an Indian tribe without regard to the marketability of the title to allow the availability of mortgage insurance on Indian lands. In other words HUD would guarantee that the Indian trust status of Indian lands could not be endangered even in cases of foreclosure.

These proposed HUD changes in the FHA program would facilitate the involvement of the private sector on Indian areas without any new Federal funds. It seems unlikely that lenders would find it preferable to use a new, untested program when the expertise and financial incentives exist in the Federal Housing Administration and the Veterans' Administration.

Second, under title I, which authorizes funds for repair, new construction, or acquisition, it mirrors the HUD Indian community development block grant program and the BIA HIP program with regard to rehabilitation. We question the advisability of setting up and maintaining a new program in a time of limited Federal funds.

We also note that the development of three separate—two new—programs would be extremely staff intensive. Further, we believe that the Indian people want to be able to take advantage of the housing programs administered by HUD, the Veterans' Administration and

Farmers Home Administration and not be relegated to dealing with one agency.

Any Indian housing legislation should provide cost containment techniques to insure maximum use of Federal expenditures and the fair and uniform provision of Federal benefits. For example, families assisted under title II would be required to make monthly payments of 20 percent of adjusted family income.

These deductions from gross income, however, are much more generous than currently provided for in the HUD Indian housing and other HUD assisted housing programs. Each family would be permitted a $1,000 deduction per family member and a further deduction of the greater of $3,400 or the amount of the family's itemized deductions for that tax year.

In contrast, current HUD programs only permit a $300 deduction for each dependent in Indian housing. In fact, total deductions average approximately $1,500. Moreover, by vesting the discretion concerning rental payments by families assisted under title I in the tribal housing agency, those families would not necessarily have to make any payment. The equity of such an approval merits further consideration.

Families assisted under title I could receive a free unit, while those assisted under title II, perhaps with only slightly higher adjusted gross incomes, would be required to pay 20 percent or more of their adjusted gross income each month.

Indeed, even families with equivalent adjusted income levels would fare differently under this bill, since each tribal housing agency alone decides whether families within their tribe receiving title I assistance would have to make a minimum monthly payment. Such broad delegation of authority to the tribal agency has the potential for favoritism, fraud, and abuse, and accordingly such a delegation requires careful and thorough consideration.

With respect to dwelling size limitations, I would stress that in HUD programs the failure to use maximum size limitations has resulted in unnecessarily large dwellings, thereby reducing the number of units which could receive assistance. Accordingly, size as well as construction guidelines may be more advisable than statutory limitations, thereby leaving program managers the administrative flexibility to operate the program.

S. 2847 indicates that the program is to be administered by a tribal housing agency under an agreement with the tribe. However, the bill does not clearly state that the tribe is legally accountable in the case of defaults or other problems. Based on HUD's experience with defaults by IHA's and no legal accountability by the tribal government, it is clear that project agreements must be applied for, executed by, and administered on the basis of full legal responsibility of the tribal government.

The bill provides standards which are too specific for application to all Indian areas. The HUD approach for both existing and new construction standards would be to give the tribe the flexibility to use either local or model housing or building codes with the option that these standards could be waived to assure that culturally appropriate housing is provided as long as minimal health and safety standards are met.

The bill states that IHS is responsible for monitoring the construction activities. Also, the bill specifies that IHS will provide both onsite and offsite water and sanitation facilities. In the HUD Indian housing program onsite facilities have been provided as a part of the housing development costs thereby minimizing additional Federal expenses and we think this should apply to any new Indian housing program as well. It is also questionable whether IHS should be responsible for construction monitoring when this would duplicate the responsibility of the administering housing agency.

In conclusion, HUD is actively considering various ways to deliver Indian housing in the future. We recognize that there is a serious need for building additional homes on restricted and trust lands. The administration will actively consider the possibility of proposing a program in fiscal year 1984. There will be no gap in Indian housing in fiscal year 1983 since there are still almost 15,000 units in the HUD development pipeline.

While, as you know, it is too early in the fiscal year 1984 budget and legislative process to discuss the specifics of any administration proposal, let me share with you some of the directions proposed by HUD.

The HUD proposals generally build on current programs and therefore could be launched in fiscal year 1984 without unnecessary and costly delays. Our proposals are based on the premise that the tribe would be fully responsible for the program and would use the Indian Housing Authority or a tribal agency to administer the program if they choose.

The proposals would provide for greater tribal autonomy and flexibility and are a departure from the Federal administration of the current public and Indian housing program. By that I mean that the proposed program would be administered by the tribe or its designee with the flexibility to use the funds for a variety of housing and related community development needs.

Program requirements would be limited to cost considerations, use of local or model housing and construction standards, a minimum family contribution, and fiscal responsibility.

One approach which is similar to the rental rehabilitation model would entail the use of community development funds as a front-end write down of housing construction costs. The remainder of the housing construction costs would be financed through an FHA loan. This assumes the FHA legislation would be amended to assure that leader participation does not jeopardize the Indian trust land.

This alternative could adapt the certification program by tying the certificate subsidy to the unit constructed to support the difference between the mortgage payment and other housing expenses and 30 percent of the family's adjusted income. The advantage of using the certificate program is that it guarantees that low income Indian families only pay 30 percent of their meager income for housing.

Another advantage of this proposal is that it involves the private sector support in the financing of these units so that Indian people are less dependent on Federal funds. Finally, this proposal builds on housing approaches being proposed by the administration, yet adapts them for Indian areas. In this way Indians benefit from the same programs that are available to other Americans.

We believe that S. 2847 would lead to increased administrative costs and less efficiency in the administration of Indian housing. In closing I would respectively recommend that your committee, in conjunction with the Committee on Banking, Housing, and Urban Affairs, solicit tribal and other Indian views on other approaches which could be launched expeditiously in fiscal year 1984.

The Indian people should have the opportunity to comment on these various approaches. In the meantime HUD will work diligently, through the Indian housing authorities, to manage the current Indian housing program in the best and most efficient manner.

Thank you.

Senator COHEN. Thank you very much.

You mentioned that back in March you would have a task force proposal within 2 weeks. What has happened to that proposal?

Mr. ABRAMS. As you indicated, the proposal went to OMB, and they have not taken any further action on it.

Senator COHEN. Yet you ask this committee, in conjunction with the Banking and Housing Committee, to hold hearings calling upon tribes to come forward to propose plans that will expeditiously be considered for fiscal year 1984. If OMB cannot take any action, how do you expect the tribes, working in conjunction with two congressional committees, to take the initiative?

Mr. ABRAMS. As you know, the fiscal year 1984 budget process is underway within the administration. Our proposals have been submitted to OMB, and we will be meeting with them in so-called hearings in the next month of so.

Senator COHEN. What conceivable justification is there for OMB not coming up with a proposal for a housing program?

Mr. ABRAMS. I think the only justification is that the administration was not able to reach an agreement within itself as to what the most effective way is of pursuing the problem.

Senator COHEN. The administration also called for rescission of the funds for housing for fiscal year 1982, and no funds for fiscal year 1983. I suspect, in the budget proposals coming up for fiscal year 1984, that there will not be any funds either.

Mr. ABRAMS. The subject of 1984 is going to be taken up in the budget hearings between HUD and OMB and are somewhat based on my remarks in terms of what HUD feels would be the basis for an Indian housing program.

Senator COHEN. What evidence have you seen that a shift in attitude would be any more acceptable to have funding for housing units in 1984 than it was in 1983?

Mr. ABRAMS. I believe that there is agreement that a program should be arrived at.

Senator COHEN. An agreement between whom?

Mr. ABRAMS. Agreement within the administration that there should be a program arrived at for 1984.

Senator COHEN. It has not been reflected by OMB's action.

Mr. ABRAMS. It has been reflected in conversations between OMB and HUD in terms of what HUD's ideas and what HUD's proposals were to the OMB task force on Indian housing. We are looking forward to pursuing those.

Senator COHEN. Let me continue with your testimony. You mentioned that title III of the bill would establish a loan guarantee program that would require a substantial addition of Federal personnel, and they would not be necessary if we just utilized the existing personnel of FHA and VA. Do you mean to suggest that there be no additional personnel required in FHA and VA if the programs were made available to Indians?

Mr. ABRAMS. That is correct.

Senator COHEN. You can handle the existing workload with existing personnel plus the Indian tribes with no additional personnel?

Mr. ABRAMS. Of course we are hoping that the demand for FHA loans is going to increase as the economy continues to pick up during the next several years. However, we are moving to a system of delegated processing where the processing of FHA loan activity is done through mortgagees whose incentive is to originate loans and then sell them through Ginnie Mae to the secondary markets. Therefore, we are relying on the private sector and profit incentives to do processing through all the FHA programs.

We would have an outreach program to include the availability of FHA funds on the Indian reservations.

Senator COHEN. Back in March you indicated that there were 14,000 units of housing in the pipeline. Today you indicated that 14,600 units are in the pipeline, including some 2,589 new units applied to HUD in fiscal year 1982. How many pipeline units have been moved to construction and occupancy since March?

Mr. ABRAMS. First of all, my statement that was submitted to you was in error, and I tried to correct it verbally. However, the 14,600 should be 13,600. I apologize for the error in the printed text.

We had a remaining pipeline of 11,946 or approximately 12,000 as of August 31 of this year. Therefore, we had moved 3,000 units since the end of last fiscal year. We expect that to increase by another 1,000. So we should have completed about 4,000 units this fiscal year.

Senator COHEN. You have completed the 4,000 that were appropriated?

Mr. ABRAMS. Yes; that were appropriated.

Senator COHEN. In spite of the administration's request for no funding in fiscal year 1983, the Senate Appropriations Committee provided funds for 3,000 units for fiscal year 1983. Are you going to be prepared to administer those funds?

Mr. ABRAMS. Yes, sir.

Senator COHEN. Maybe you can straighten out a bit of confusion for me, Mr. Abrams. The administration has requested no funding for housing in fiscal year 1983 and a rescission for 1982. You are saying to me now that there is agreement within the administration between OMB and HUD that you are going to make a request for housing for 1984.

Mr. ABRAMS. There is an agreement between OMB and HUD to meet and come up with a proposal for 1984, yes.

Senator COHEN. When do you propose to come up with that proposal?

Mr. ABRAMS. The meeting is scheduled within the next month.

Senator COHEN. Another month?

Mr. ABRAMS. It is a date certain, but there are several dates to discuss all of HUD's proposals for 1984. This will be taken up in that context and in the context of the internal budget debates that will go on this fall through December.

Senator COHEN. What you are saying is that the administration has come to the opinion that there is a need for subsidized Indian housing.

Mr. ABRAMS. The administration always agreed that there is a need to subsidize Indian housing. The administration position has been that the current HUD program is too expensive, which our statement this morning and the testimony from members of the committee have reinforced, in that we need a new way of meeting our responsibility for providing housing, particularly for low income families on reservations.

Senator COHEN. That is what this bill is intended to do.

Mr. ABRAMS. Yes; I understand that, Senator. However, I am suggesting that that is one alternative to the current HUD program. The administration has other alternatives that are under consideration.

Senator COHEN. The problem is that you say that it is too expensive; it is too complex, and we have to do something about it. We say to do something about it, and nothing is done. Then when Congress comes up and says that they have a bill, you say that you do not like it and you will come back sometime next year with an alternative.

Mr. ABRAMS. I think in my testimony I gave you some of the germanal thoughts of what HUD's proposal would entail. It is based on bringing private money onto the reservation for all housing, whether it is for middle income or families needing a subsidy through the FHA program, and then providing for those families that are eligible for the certificate program the so-called voucher.

Senator COHEN. How long is that voucher good?

Mr. ABRAMS. Currently the voucher is good for three 5-year budget authority periods. So the current voucher is good for 15 years. The proposal for 1984 is that the voucher have a 5-year budget authority. In the case of this program there obviously would be a need for a longer budget authority to tie it with the mortgage period.

Senator COHEN. Is the voucher or certificate program assuming that there is an availability of rental housing?

Mr. ABRAMS. It assumes it in non-Indian communities. What we are saying is that the voucher would be tied to an FHA insured program that would provide a house. The cost of the house would have to be brought down to a level where it is affordable under the voucher by some kind of a grant program. Therefore, you need three elements. Whether they are HUD administered elements or BIA administered elements, I suppose, is a subject of debate within the administration as well as between the congressional committees.

However, putting turf battles aside, which HUD is certainly willing to do, we think that the FHA insurance program should be utilized because it exists. It has $3 billion in assets. It has access to secondary markets. The problem then becomes how to help families who cannot afford a privately financed house, which as Mr. Peake said, and we agree, is approximately 90 percent of the housing demand on the reservations.

You can do that through some kind of a buy-down. Whether it is through BIA or the HUD CDBG program is something that can be debated. Then you bring the cost down to the point where a family receiving a certificate could afford that house. Therefore, you can utilize the certificate program. We have 750,000 of them in use throughout the country, but you are not able to utilize them on reservations right now because there is no housing available.

If we could make housing available, write it down through a block grant or some kind of a grant program, and then provide the certificate, you could utilize two existing mechanisms that all Americans have: FHA and certificates. What is necessary is to fill the gap whether it is through BIA or community development block grants or whatever could be used.

Senator COHEN. You use that phrase that all Americans have access to it. Is there not a somewhat unique situation with many tribes? I mean that we have a difference with Indian tribes in terms of their culture, their remoteness, the laws, the fact that they live on trust lands rather than fee estates. You want to open these programs up so they can compete on a basis with all other minorities. I think you used that in your opening statement. They are different.

Mr. ABRAMS. They are different, but I say we can adapt the programs that exist so they work on the reservations.

Senator COHEN. Tell me how that FHA program is going to work.

Mr. ABRAMS. The FHA program will work by removing the requirement that the lender has to provide title to the land upon a foreclosure. That is the basic statutory problem that is addressed in the Senate authorization bill. With the passage of that bill, lenders whose profit incentive is to originate mortgages so that they can sell them through Ginnie Mae to the secondary markets would process known applications.

Senator COHEN. How are they going to do that? Is HUD going to guarantee the lender full payment, since you are going to have no way to obtain the value of the home and the land?

Mr. ABRAMS. The FHA insurance program guarantees 100 percent of the cost of the claim from the lender in case of a foreclosure. In this program there would have to be an agreement including the tribe so that the house—if a particular family is either in ownership with the tribe, so that the tribe and the family were joint owners of the property, or the tribe itself was the owner of the property, it would then bring in another family. If the 10 percent of the Indian population that does not need a subsidy buys a house and then defaults, the tribe would find another family to replace them. FHA would be taking a risk, but that is the role of FHA. It has been for the last 50 years.

Senator COHEN. FHA has always had access to the property to get its claim back.

Mr. ABRAMS. It has by statute, but we are proposing to change the statute. We have to come up with a rather unique way of making the program work on reservations.

Senator COHEN. As far as the FHA program is concerned, FHA will guarantee 100 percent and will have no recourse against the property on Indian land?

Mr. ABRAMS. It would only have recourse against the improvements, and it would have to be done——

Senator COHEN. In the house.

Mr. ABRAMS. That house, but not the land. It would have to be done in agreement with the tribe. If the tribe itself were the owner of the house or co-owner of the house, then you do not have any problems that we have envisioned in terms of violating the trust land.

Senator COHEN. How do you deal with the issue? Does the lender have to go to court first to get a judgment?

Mr. ABRAMS. No, the exemption that is in the Senate authorization bill removes the requirement that the lender has to provide HUD with clear title to the land. That is the purpose of the legislation that is in the Senate authorization bill.

Senator SCHMITT. It makes the tribe liable.

Mr. ABRAMS. The tribe would have to have an interest in the ownership of the house so that they could substitute owners rather than going through a foreclosure and sale. You would simply substitute owners with the tribe being the continuing co-owner of the house. Whether you do it as a BIA guarantee program or an FHA insurance program, you have the same problems.

What I am suggesting is that since FHA has existed, it has had assets; in terms of its single family unsubsidized programs which has never cost the taxpayers a penny, and whose original purpose was to provide private funds and mobility throughout the country. In the early days of the program its purpose was to bring eastern capital to the West as development took place. You can go through the same mechanism of making capital investments from the private sector attractive on reservations because of the Federal insurance and the lack of risk in making that investment.

Senator COHEN. Tell me the mechanism again. The lender claims a default in payment on the home. What happens?

Mr. ABRAMS. Then the tribe finds a substitute purchaser.

Senator COHEN. There is no judgment. There is no reason to go before a court.

Mr. ABRAMS. No.

Senator COHEN. No tribal court?

Mr. ABRAMS. No.

Senator COHEN. All the bank has to do is say that there has been a default.

Mr. ABRAMS. The bank submits it, and FHA either accepts an assignment.

Senator COHEN. FHA at that point pays the lender?

Mr. ABRAMS. There are two different tracks with FHA. If the family has lost employment temporarily, either for sickness or for some other reason, there is a need for forbearance. Then FHA accepts assignment of a loan so the family can stay in the house until their circumstances improve.

If the family defaults and abandons the house or for some reason or another is not going to use the house any more, then under normal FHA proceedings you foreclose and take the house. What we are saying is that to adapt this to the situation on the reservations the tribe would then find a substitute owner of the house or could turn it into a rental program; into its stock of housing that it uses under the rental program.

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However, FHA is there to make the payoff to the private sector capital investor if there is a default on the loan.

Senator COHEN. Your recommendation is that you are considering at least putting the construction of the new homes for eligible activities under the community development block grant. Is that right?

Mr. ABRAMS. That is a way of doing it, but I do not claim that that is exclusively the proper way of doing it. Community development block grant funds are now used on the reservations to do rehabilitation through the tribe. There are a lot of different ways that they could be adapted to the buy down necessary to make the housing affordable.

However, that does not say that a BIA grant program may not be equally acceptable. We are trying to come up with a program that will work on the reservations.

Senator COHEN. The question I asked is this. If that were to be a recommendation, if HUD were to pursue that particular option, would you then make a request that the community development block grant funds be increased accordingly?

Mr. ABRAMS. The reservations currently get, I believe, $30 million out of community development block grants annually. I believe it is going up to $30.7 million. That is not my area at HUD, but that is the best information I have. You would need additional funds if you were going to make this program work.

Senator COHEN. You suggested that this bill was more generous to Indian families than the current HUD Indian programs and other assisted housing programs. In S. 2847 each family would be permitted a $1,000 deduction per family member along with a $3,400 deduction from the family's gross income. In contrast the current HUD programs only permit a $300 deduction for each dependent in the Indian housing, averaging some $1,500. Is that correct?

Mr. ABRAMS. Yes, sir.

Senator COHEN. Is it not true under existing programs that costs for utilities are deducted from the monthly payments?

Mr. ABRAMS. The HUD rent includes utilities. That is correct. So the HUD requirement now is that the rent be either 10 percent of the gross income, the shelter component of welfare if that is applicable, or 30 percent of adjusted income, whichever is higher. The total family rent includes the cost of utilities.

Senator COHEN. Are there any other monthly deductions such as for extra large families or elderly residents?

Mr. ABRAMS. We have a regulation in process that will spell out deductions based simply on the number of dependents in the family.

Senator COHEN. Would you provide the committee with a list of all the deductions that are available under existing HUD programs?

Mr. ABRAMS. I would be happy to, yes.

Senator COHEN. Without objection, the record will be held open to receive that information.

[Subsequent to the hearing the following correspondence was received for the record:]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

OFFICE OF THE ASSISTANT SECRETARY FOR
HOUSING - FEDERAL HOUSING COMMISSIONER

IN REPLY REFER TO

NOV 4 - 1982

Honorable William S. Cohen
United States Senate
Washington, D.C. 20510

Dear Senator Cohen:

I appreciated the opportunity to testify before the Senate Select Committee on Indian Affairs.

As you requested in your October 7 letter, following are answers to additional questions for the hearing record. We assume you are referring to a HUD option I described at the hearing, that is, the combination of FHA Mortgage Insurance with Housing Grant and a Modified Certificate Program.

Question:

In order for the FHA guarantee program to work on Indian lands, you stated in the hearing that a tribe and an Indian family must become joint owners of the property. Could you explain to me the procedure for joint ownership such as you referred to in your testimony? What incentives does HUD envision in the program that would induce a family or a tribe to enter into a joint ownership arrangement? Is there any precedent for joint ownership of a home in general, and also in Indian affairs?

Answer:

As I stated in my testimony, this HUD Indian housing program is predicated on an individual borrower and the Tribe's governing body being co-mortgagors with equal responsibilities under the mortgage. The incentive for the tribe is twofold: First, they retain control of the property should the individual borrower default and have several options such as adding a certificate or substituting another individual borrower to cure the default; and second, they will encourage the participation of private lenders on the reservation. The Department has always insured co-mortgagor mortgages and has recently implemented a program where owner occupants are co-mortagagors with an investor.

Under the HUD proposal the incentives for the family to be a co-mortgagor are: 1) that they are able to purchase a house and pay no more than approximately 30 percent of their adjusted income for

housing; 2) that there are relief measures available in case their income fluctuates, including use of the FHA TMAP program under certain circumstances or in applying for a certificate, in case their income goes down permanently.

Question:

In cases of individual trust land or allotted land, rather than tribal trust land, how do you suggest that joint ownership be accomplished?

Answer:

Further research is needed to identify the best approach to this issue. As I indicated at the hearing, HUD will assure that the program does not jeopardize the trust status of the Indian land. It should be noted that the status of individual trust or allotted land, in the case of default by the family, affects all types of housing programs, including those proposed in S 2847 and the current HUD Indian housing program.

Question:

Are you suggesting that the tribe, rather than the lender, evict a family who has failed to meet its payments, without obtaining a judgment from Tribal Court? If so, are you not depriving that family of property without due process?

Answer:

We are not suggesting that anyone be evicted without due process. Rather, the tribe will be in control and could use the Tribal court system or whatever due process mechanism is available.

Question:

Are you also suggesting that as long as the tribe is able to locate an eligible family to replace the current homeowner, the FHA will make no payments to the lender?

Answer:

As long as the tribe replaces a family unable to make payments with a family financially able to make the payment, there would be

no default, thus no payment to the lender. However, under certain circumstances FHA could make all or a part of the payment on behalf of a mortgagor in temporary distress who qualifies for the TMAP program. As stated earlier, in cases where the family's income has permanently dropped through extenuating circumstances a certificate could be made available.

Question:

You have stated that additional personnel would not be needed by FHA or VA to administer the loans made available to Indian families because you expect the private sector to do all the processing. Could you explain to me how you plan to achieve this?

Answer:

Early next calendar year the Department intends to institute a program of delegated processing where the lender, in conformance with our guidelines, will process and close the loan and simply submit the completed package to HUD for insurance.

Question:

Would you provide a list of deductions that are available to families under the existing HUD programs, both currently and under HUD rules?

Answer:

The list of allowable deductions from total family income permitted in the public and Indian housing programs are contained in 24 CFR Section 860.403(f), which is enclosed for your information. According to the Indian field offices, deductions in the current HUD Indian housing program average approximately $1500 per family.

As indicated at the hearing, the Department is in the final stages of revising and making consistent income deductions used in all assisted housing programs. Our objective is to simplify Federal requirements for ease of administration. For instance, we will propose simply to have a $400 deduction for each minor and $300 for each elderly family; other limited deductions are currently under consideration. This policy will be issued shortly as a proposed rule for public comment.

Question:

Do you believe that lending institutions that receive guarantees under Title III of S 2847, will be unable to sell these mortgages in the secondary mortgage market? Do you have any suggestions for changing the legislation to ensure that this can be accomplished?

Answer:

Yes, authorization to use Ginnie Mae Mortgage Backed Securities would be necessary to participate in that secondary mortgage market.

Question:

Please project costs of the alternative Indian housing program HUD is considering and compare these with the program costs in S 2847.

Answer:

We believe the actual costs to the Federal Government of any Indian housing program should be essentially the same whichever agency administers the program. In the case of a comparison between the HUD option discussed at the hearing and S 2847 there are differences in costs because of the different assumptions used in structuring the two programs. In the case of the HUD option we again assume you are referring to the combination of FHA mortgage insurance with a housing grant and certificate program.

Before examining costs, let me identify the major differences in the two programs:

Unit Costs

The HUD proposal assumes that development costs can be reduced to $35,000 per unit. This assumption is based on more extensive use of modular and manufactured housing, expedited processing, state contributions (in cases such as Alaska), reduced FHA interest rates and the fact that Davis-Bacon requirements would not apply. We understand that S 2847 assumes that new units will cost $50,000 per unit except in the case of Title I where units are budgeted at $33,000 per unit.

Water/Sewer Funding

The HUD option assumes that on-site or off-site water and sewer facilities would be funded as a part of unit costs as such infrastructure is now provided with the unit in FHA programs. In S 2847 on-site and off-site water and sewer facility costs are not included.

Private Financing

The HUD option provides for private financing of every unit constructed (the amount of private financing varies with income level), thus reducing total outlays. S 2847 only provides for private financing for higher income families (less than 10 percent of total needed), thus the total outlays in S 2847 are substantially higher than the HUD option.

Administrative Costs

Neither proposal provides for Federal administrative costs. The HUD proposal assumes no new administrative expenses since staff is already in place to administer the program. S 2847 would require additional staff and expertise not currently included in program costs.

Family Contribution

The HUD proposal assumes that very low income families will contribute 30 percent of their adjusted income for housing. The Certificate payment covers the difference between 30 percent of the family's income and housing costs (including utilities and maintenance). S 2847 has no similar method for assuring poor families will not contribute more than 30 percent of their adjusted income for housing.

Insurance Fund

The HUD proposal relies on the FHA existing insurance fund whereas S 2847 requires new appropriations to capitalize the reserve.

An annual cost comparison outlined below attempts to provide for consistency between the two models as much as feasible: In our comparison we are assuming approximately 5000 new units would be constructed as authorized in S 2847 in FY 1985. In practical terms we expect about 2000 to 3000 units per year could be authorized, given limited funds.

* HUD Option

Assume 5000 new units (for consistency with S 2847 below)

| | Contract Authority | Budget Authority |
|---|---|---|
| Housing Grant: | NA | $66 million |
| FHA Mortgage Insurance: | NA | NA |
| Certificate: | $5.3 million | $79.5 million |
| Total: | $5.3 million | $145.5 million |
| Plus rehabilitation under the CDBG program | NA | $10 million |

* S 2847 (in FY 85)

5228 new units and 1750 repairs (as reported by staff involved in HR 5988, the counterpart House bill)

| | Contract Authority | Budget Authority |
|---|---|---|
| Title I | NA | $40 million |
| Title II | NA | $200 million |
| Title III | NA | 3 million |
| Total | | $243 million |
| Plus water/sewer facilities ($7500 per unit for 5228 units) | | 39.2 million |

I hope I have answered your additional questions. We are continuing to analyze the HUD options for the best and most cost effective way to address the Indian concerns in a program which involves both the private and public sectors. I look forward to an ongoing dialogue on a future Indian housing program.

Sincerely,

Philip Abrams
Assistant Secretary

Enclosure

§ 860.403 Definitions.

The definition of family and other related terms contained in Part 812 of this chapter shall be applicable to this subpart. For the purpose of this subpart the following terms shall have the following meaning.

(a) *Contract rent.* Contract rent means the rent charged a tenant for the use of the dwelling accommodation and equipment (such as ranges and refrigerators but not including furniture), services, and reasonable amounts of utilities determined in accordance with the PHA's schedule of allowances for utilities supplied by the project. Contract rent does not include charges for utility consumption in excess of the public housing agency's schedule of allowances for utility consumption, or other miscellaneous charges. This definition of contract rent is not the same as contract rent for purposes of Parts 880 to 889 of Title 24.

(b)-(e) [Reserved]

(f) *Family income.* Family income means total family income less the following:

(1) A deduction of five percent of total family income, except that the deduction shall be ten percent in the case of an elderly family.

(2) A deduction for extraordinary medical expenses, defined for this purpose to mean medical expenses in excess of three percent of total family income, where not compensated for or covered by insurance.

(3) A deduction of amounts for unusual occupational expenses not compensated for by the employer, such as special tools and equipment, but only to the extent to which such expenses exceed normal and usual expenses incidental to the type of employment engaged in by the employee.

(4) A deduction of amounts paid by the family for the care of children or sick or incapacitated family members when determined to be necessary to employment of the head or spouse, except that the amount deducted shall not exceed the amount of income received by the family member thus released.

(5) An exemption of the first $300 of the income of a secondary wage-earner who is the spouse of the head of the household.

(6) An exemption of $300 for each member of the family residing in the household (other than the head or spouse) who is under eighteen years of age or who is eighteen years of age or older and disabled, handicapped or a full-time student.

(7) An amount equal to the sums received by the head of the household or his spouse from, or under the direction of, any public or private nonprofit child-placing agency for the care and maintenance of one or more persons who are under eighteen years of age and were placed in the household by such agency.

No person in the family shall be entitled to more than one exemption.

(g) *Full-time student.* Full-time student means a person who is carrying a subject load which is considered full-time for day students under the standards and practices of the educational institution attended.

(h) *Gross income.* Gross income means total family income as defined in this section.

(i) *Gross rent.* Gross rent means contract rent plus the PHA's estimate of the cost to the tenant of reasonable quantities of utilities determined in accordance with the PHA's schedule of allowances for such utilities, where such utilities are purchased by the tenant and not included in the contract rent. This definition of gross rent is not the same as gross rent for the purposes of Parts 880 to 889 of Title 24.

(j) [Reserved]

(k) *Head of the household.* Head of the household means the family member who is held responsible and accountable for the family.

(l) *Rent.* Rent means gross rent as defined in this section.

(m) *Spouse.* Spouse means the husband or wife of the head of the household.

(n) *Temporary, nonrecurring or sporadic income.* Temporary, nonrecurring or sporadic income includes the following income:

(1) Casual, sporadic and irregular gifts, and amounts which are specifically received for, or are a reimbursement of, the cost of illness or medical care.

(2) Lump-sum additions to family assets, such as, but not necessarily limited to, inheritances, insurance payments, including payments under health and accident insurance and workmen's compensation, capital gains, and settlements for personal or property losses.

(3) Amounts of educational scholarships paid directly to the student or to the educational institution and amounts paid by the United States

Senator COHEN. Senator Domenici indicated in his written testimony that the housing programs offered under this bill are less expensive to the Federal Government than the current HUD programs. Do you agree with that?

Mr. ABRAMS. It would appear, from the analysis I have read, that the proposed legislation would be less expensive than the current HUD program, as the current BIA HIP program is less expensive and for good reason.

Senator COHEN. Do you agree that the current figure is $160,000 to $170,000 per unit under the existing programs?

Mr. ABRAMS. That is the total budget authority over the 20 or 30 years including interest and principal. However, it includes a lot of costs that are not included in the comparison. Therefore, you are not talking apples and apples. However, I believe that the approach in the Senate bill before you is better than the current approach.

Senator COHEN. One item that you mentioned in your testimony is that you said you believe that Indian people want to take advantage of the housing programs administered by HUD, VA, and FmHA and not be relegated to dealing with one agency. How did you come to that conclusion?

Mr. ABRAMS. I have come to the conclusion mainly because discussions with people involved with housing on the reservations seem to be almost unanimous. Although they were not happy with the way the HUD programs are run, because of the redtape and the effort that is involved in the HUD bureaucracy, they still felt that they had better housing under the HUD program than under the previous program run by the other agency.

We have been encouraged by the Indian community representatives that we work with to keep HUD involved in housing programs on the reservations. If that is not the case I do not believe HUD wants to intrude itself in a situation where it is not wanted. However, I sincerely believe from my conversations that HUD has produced a better level of housing and produced housing that has more acceptability on the reservations than previous housing programs run by other agencies.

Senator COHEN. Senator Schmitt?

Senator SCHMITT. Thank you, Mr. Chairman. Mr. Abrams, why would the program envisioned by the Cochran bill be less expensive than existing programs?

Mr. ABRAMS. Why would what I am talking about be less expensive?

Senator SCHMITT. No. You just said—and I may have misunderstood—I think you said that the program envisioned by the Cochran bill would be less expensive than the existing HUD programs. Why do you say that?

Mr. ABRAMS. It has a lot less requirements than the HUD bill. First of all it does not have any Davis-Bacon requirements which can increase the cost from 10 to 15 percent.

Senator SCHMITT. I have heard 30 percent.

Mr. ABRAMS. I was not going to exaggerate.

Senator SCHMITT. The Indian housing authorities in New Mexico say it is 30 percent.

Mr. ABRAMS. It depends on the housing. It is hard to generalize because many housing authorities would use union contractors anyway.

So that minimizes the savings in some areas. In Alaska the wages are roughly comparable.

Senator SCHMITT. From the input I have received from the Indian housing authorities in New Mexico, it is they would not. If they were relieved of Davis-Bacon they would save 30 percent on housing units.

Mr. ABRAMS. From my prior experience as a builder, I can believe that.

Senator SCHMITT. That is one reason why they are less. Is that the main reason or are there some other reasons?

Mr. ABRAMS. I think that is one of the principal reasons. I think that the approach of a grant is going to produce less costs of construction than the current HUD program that deals in contract authority and budget authority and high loan authority limits with a great deal of redtape.

I do believe that the current HUD program, if it were to remain, would be substantially changed in the next year or so as we go through a series of deregulatory efforts that are applying to all of the HUD housing programs, including changes in the minimum property standards to allow them to defer to local building codes, and efforts to deregulate the Washington-based preferences for certain aspects of housing which we would now defer to the local authorities, as well as some of the initiatives we have taken and which will become final rules to limit the total development cost of public and Indian housing projects.

So I think the comparison between what was the budget authority required for HUD housing and what it would be if the program continued would have to be made to compare it to what the BIA program is going to cost.

However, the answer to your question is that I think the BIA approach would be less expensive.

Senator SCHMITT. There are two main things. One is the Davis-Bacon problem. The other is that grant programs are over the long haul less expensive than loan programs. Is that what you are saying?

Mr. ABRAMS. I believe they are, depending upon the design and the amount of contribution from the people who are utilizing the whole program and whether the grant program allows everybody in the community rather than just the people who need assistance to utilize it.

Senator SCHMITT. It is also my understanding from testimony received in dealing with Farmers Home rural housing programs that the grant moneys also are more flexible in how they attract or leverage other money for use in housing programs. Do you agree with that?

Mr. ABRAMS. Yes, sir, it has been the experience of the community development block grant program that they have been able to lure private capital onto reservations by leveraging incentives in the program. I would assume, particularly whether you start a new BIA bureaucracy to induce private capital through a guarantee program or you use FHA, that you could induce Federal capital, private capital onto the reservations and therefore drastically reduce the Federal outlay for housing.

Senator SCHMITT. Do I understand that the administration is considering grant programs for Indian housing in addition to what currently exists within HUD?

Mr. ABRAMS. The administration is considering a substitute program. HUD's suggestion is that it include three elements including

a grant plus two existing programs. I think BIA will be making other recommendations. In the 1984 budget process the administration will come up with a housing program for the Indian people.

Senator SCHMITT. What specific improvements have been made in Indian housing programs that are now administered by HUD? This is not counting what the Banking Committee has recommended. What specific improvements have you made?

Mr. ABRAMS. We have instituted management improvement programs in most of the tribes that were having difficulties. We have been able to work with the tribes and help them with their accounts receivable. We are building more flexibility through the relaxation of minimum property standards.

Senator SCHMITT. Has that happened yet?

Mr. ABRAMS. Yes, both of those have happened. We have a demonstration going on in Montana with the Crow Agency where we have brought in an outside certified public accounting firm to work with them and to see how that will assist them technically in being able to administer the programs.

However, to be honest we have made the programs much too cumbersome administratively. We have made it difficult for many of the housing authorities to succeed. So a lot of our efforts have been to try to help them adapt to requirements which are unnecessarily onerous. However, we have been working through technical assistance and through trying to bring the HUD bureaucracy to the reservations to try to work out the problems that have come up over the past 5 or 6 years and to resolve the problems so we can reduce some of the tensions if not some of the real problems that exist between the HUD administrators and the tribal people who are trying to produce housing.

Senator SCHMITT. Is it your impression that the Indian housing authorities have the competency to manage these programs well?

Mr. ABRAMS. The Indian housing authorities range from excellent to poor, like public housing authorities or other people or private developers with whom HUD deals. It is my understanding that about 20 percent of the housing authorities need very little HUD oversight and run the programs effectively. This is notwithstanding the red tape and the administrative burdens that we put on them.

Senator SCHMITT. Certainly for those housing authorities the requirements could be relaxed and the delivery of houses presumably would become more efficient.

Mr. ABRAMS. Absolutely, if the current program continues, we intend to, as we are in other areas of the Office of Housing; deregulate and liberalize the requirements of HUD as well as giving more local autonomy in the control of the programs.

Senator SCHMITT. What about the others? Do you think that a more liberalized program would encourage increased capability within the housing authorities?

Mr. ABRAMS. My personal opinion is that when HUD got into the Indian housing program area they forced a model of public housing agencies on the tribes. I do not think it was necessary. I think that the tribal governments should have been given the option of either setting up a housing authority or something else that was acceptable to the locally constituted leadership of the tribes rather than forcing the model of public housing onto the tribal government.

I believe that any program, whether it is the HUD program continuing or any of the new alternatives we are talking about, should run through the tribal government, and they should have the option of either using a housing authority or some other agency.

Senator SCHMITT. You are almost talking about block grant with FHA available.

Mr. ABRAMS. I believe that a block grant with FHA availability and certificates available as they are to other low-income families in the United States could make an effective program.

Senator SCHMITT. It sounds very much like a rural housing block grant to me, but who am I to say. Are you going to make recommendations relative to Davis-Bacon specifically as it regards Indian housing?

Mr. ABRAMS. HUD does not set policy on Davis-Bacon. We defer to the Department of Labor. The answer to your question is: no, I am not going to.

Senator SCHMITT. HUD would not make such a recommendation?

Mr. ABRAMS. In the overview of things, HUD does not make those kinds of policy decisions.

Senator COHEN. Do you factor in what the cost is of Davis-Bacon? Is it 15 percent? Is it 20 percent? How does that translate in terms of budgetary impact? You must submit those kinds of facts to OMB.

Mr. ABRAMS. I think we have submitted several papers to OMB on the cost effects of Davis-Bacon on various HUD programs.

Senator COHEN. What do you estimate the cost to be?

Mr. ABRAMS. Again, it depends upon so many variables; such as what wages would actually be paid if there were no Federal requirements, what kind of housing, how labor-intensive it is, whether we would like to see more utilization by the tribes of manufactured housing which thereby eliminates many of the ill effects of Davis-Bacon.

From my personal experience I have seen Davis-Bacon increase the cost of projects anywhere from 5 percent to 25 percent.

Senator COHEN. Have you taken any steps to expedite the pipeline process, the delivery of houses in the pipeline?

Mr. ABRAMS. We have worked out the problem of sewer and water not being available through the Indian Health Service which has been a major problem. We have discussed in this committee and the Senate Authorization Committee, as you know, that allowed us to provide funds to the Indian Health Service. We have reached agreement with them to provide funds for, I believe, about 3,500 units that did not have an appropriation through HHS. Through an exchange of correspondence, we have reached agreement with IHS to provide that service.

As far as expediting the pipeline is concerned, we have been encouraging—excuse me, but maybe Pat Arnaudo can answer this better than I. She is the acting head of the Indian housing program at HUD.

Ms. ARNAUDO. There are a couple of things. We still have more steps to take in reducing pipeline processing by deregulating, and we are working on that right now. However, since December 1979, when the pipeline processing was 41 months, we have reduced it at this point down to 36 months. These reductions have been largely the result of improved monitoring by our Indian field offices, which you and your

colleagues in the House encouraged us to create, the tight bidding climate that currently exists in the housing industry, and our field offices putting pressure on the IHA's to expeditiously develop their projects or face recaptures.

Mr. ABRAMS. We are doing several other things, too. We are encouraging the tribes to reuse plans. With most single family construction in this country—and most of the Indian housing is single family—there is a lot of repetition of plans although there are different variations. The previous HUD procedure had been to encourage a unique set of plans for each development. We are trying to encourage tribes to use the same plans. Then we do not have to review them. Instead of going through a two-step review process, we can just accept the fact that the tribe was using what it used before. Then it does not have to resubmit.

We will continue to make improvements. I am not happy with the 36-month delivery time in the pipeline. However, to be honest, compared with some of the other programs in the Office of Housing, it is not bad. Some of it is us choking on our own regulations and our own procedures.

Senator SCHMITT. Mr. Chairman, I will have a number of other questions for the record.

Senator COHEN. Without objection, the record will be held open to receive those questions.

[Subsequent to the hearing the following correspondence was received for the record:]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

OFFICE OF THE ASSISTANT SECRETARY FOR
HOUSING - FEDERAL HOUSING COMMISSIONER

NOV 4 - 1982

IN REPLY REFER TO

Honorable Harrison H. Schmitt
United States Senate
Washington, D.C. 20510

Dear Senator Schmitt:

As you requested in your October 21 letter, I am responding to additional questions for the hearing record on S 2047, the proposed Indian Housing Act 1982.

Following are responses to the specific questions:

Question:

The Indian Community Development Block Grant is successfully implemented by the Department of Housing and Urban Development. I think that the hearing record would be improved by the inclusion of your comments on this program. Please include responses to the following questions.

- How many tribes participate in this program?

- How do these tribes receive funding? Is the distribution based on grantsmanship rather than through the entitlement process? How do tribal allocations compare with the amounts received by cities on a per capita basis?

- How are these funds spent by tribes? What level of rehabilitation activity occurs under the CDBG? Does this include plumbing? If so, can you break out the amount used for various rehabilitation activities. What is the level of water and sewer grant activity under this program? How does this compare with the amount and level of activity of similar programs administered by IHS or BIA?

Answer:

The Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages provides funds to these entities for various community development purposes including housing rehabilitation programs, tribal facilities, infrastructure improvements, and economic development projects. Since the program's inception in 1978, Indian Tribes and Alaskan Native Villages have received $147.3 million for this purpose. In FY 1983 another $30.7 million has been appropriated for this program.

The Indian CDBG Program is not an entitlement program; rather it is a competitive program which selects projects for funding by considering factors such as need, benefit, and impact. The total amount of funds

appropriated for the program compared to the need prevents fund distribution by entitlement to the 500 Tribes and Villages which are eligible. In FY 1981, the most recent year for which information is available, the total dollars requested were $79.4 million while the total funds available were $33.3 million. (A per capita comparison of the Indian CDBG Program to the Entitlement Cities CDBG Program, thus, is inappropriate since funds are not allocated in the same manner.)

Each year the Indian CDBG Program funds are distributed to the six HUD offices having responsibility for the program — Chicago, Oklahoma City, Denver, San Francisco, Seattle, and Anchorage — based on the percentage of the total eligible Indian population in each office's jurisdiction; (i.e., if Chicago has 10 percent of the eligible Indian population that office is allocated 10 percent of the Indian CDBG funds). Each office then holds a competition inviting all eligible applicants within their jurisdictions to submit proposed projects for consideration. Projects from applicants having the administrative capacity to administer grants are rated and ranked. Highly ranking projects are invited for funding until all the funds have been committed.

In FY 1982 129 Tribes were funded out of 256 that applied. The funds were distributed by project type as follows:

| | |
|---|---|
| housing rehabilitation | 32% |
| infrastructure improvements | 30% |
| community facilities | 14% |
| economic development | 16% |
| land acquisition | 6% |
| other | 2% |

As noted above, housing rehabilitation projects account for the largest amount of funds. Eligible applicants indicated that housing is one of the greatest needs in their jurisdictions. Consequently, many of them propose to use CDBG funds for rehabilitation. In undertaking rehabilitation programs, the majority of tribes propose to do so through grant programs which will bring houses up to a standard condition. In rehabilitating a house, the renovation of plumbing would be considered an eligible expense as would structural repairs, insulation, and weather proofing, electrical repairs, and cosmetic improvements. (Specific data on the amounts spent on various types of rehabilitation improvements is not collected.) About $10 million of the $30 million in Indian CDBG funds are used annually for rehabilitation activities. According to information provided by the Bureau of Indian Affairs, a substantial portion of the Housing Improvement Program (HIP) monies are used annually for rehabilitation activities.

Water and sewer improvements are also an eligible activity under the CDBG program. Of the amount of funds approved for infrastructure improve-

ments, a major portion was specifically for water and sewer. Besides water and sewer, infrastructure includes fire protection facilities and equipment, and road improvements. According to information provided by the Indian Health Service, their total annual appropriation for water and sewer facilities was $38.7 million in FY 1982.

Question:

What level of administrative expense would you associate with the implementation of this program? Is this included in the current cost estimates for the program (S 2847)? Should a limitation be placed on administrative costs?

Answer:

Administrative expenses are not included in the cost estimates for S2847. It has been suggested that approximately 150-200 staff would be needed to administer this program. This estimates appears to be low, given the fact that S2487 envisions the administration of three separate programs. Staff would be required in various housing functions for each program, including housing financing, architecture and engineering, law, occupancy, general management, etc. There has been no analysis of the staffing requirements in field offices (S2847 will require considerable field office support which must be reconciled with current Administration plans for the consolidation of BIA field functions). Additional administrative expenses should be included to take into account the lead time to hire and train new staff since S2847 envisions BIA undertaking functions for which they have had little experience.

Given the great potential for high administrative costs under S2847 some consideration should be given statutory language to contain administrative expenses. It should be recognized, however, that since there are only a limited number of current BIA housing staff, substantial new administrative expenses will be necessary to administer the program as authorized in S 2847.

Question:

When do you feel this program could actually become operational? What start up time do you anticipate?

Answer:

Given the lead time necessary to hire and train new staff and the time required to develop new regulations and guidelines, we estimate the program would begin implementaion about 1 to 1 1/2 years after Congress authorizes and appropriates funds for the program.

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Question:

BIA has estimated that between 150 and 200 staff would be required to implement this program. Do you feel that this is adequate?

Answer:

As indicated previously, 150-200 staff (both in Headquarters and Field Offices) is a low estimate of the staffing requirements for three new housing programs authorized under S 2847. Such figures also do not take into account auxiliary staff required to implement housing functions such as appraisers, lawyers, etc.

Question:

Based on your experience with Indian Housing programs, does S 2847 offer adequate technical assistance and oversight of management procedures to ensure the success of these new programs?

Answer:

While S 2847 does contain language to provide for technical assistance to Tribes and housing agencies, there is no reference in the bill to emphasize the responsibility of the Federal Government for technical assistance and oversight of both development and management processes. In our experience such oversight and technical assistance is essential to assure the best use of limited Federal funds and to minimize fraud, waste and mismanagement.

Question:

Title I of S 2847 requires that funds be distributed to Tribes on the basis of their ranking in a housing need priority system. If assistance is received in one year, they would lose their ranking for the next. Since there is no guarantee that a tribe will receive continuous funding, will this result in difficulties in tribal planning activities? Would you please comment on the effect of this system, as opposed to that achieved through an allocation formula?

Answer:

An entitlement system which uses an allocation formula is a desirable method for distributing housing and community development funds, if the funding level is sufficiently high to provide funds to all eligible and qualified recipients. In cases where there are limited funds, a competitive allocation can be used, with conditions specified to assure adequate Tribal planning. For instance, in the Indian CDBG program the competition is structured to take into account need and impact of such programs as well as tribal capacity and the quality of the proposal. As a part of their proposals,

Tribes are required to show evidence of how the proposed program can be completed and what will happen when the Federal funding terminates.

Question:

Should the income of an individual be taken into account in determining the amount of a grant given through Title I?

Answer:

We believe that all low-income families should be required to contribute a portion of their adjusted income for housing. The fact that Title I of S2047 does not require a family contribution (as does Title II) results in the Federal Government giving an inconsistent message to Indian people. HUD has experienced considerable problems in enforcing rent collections when the BIA Housing Improvement Program (HIP) provides "free" housing in the same reservation community as HUD housing. We believe it is equitable to require low income families to pay the same percent of their limited income for housing whether they are in public housing, Indian housing, BIA housing, or FHA housing. Title II of S2047 permits lower income families to pay only 20 percent of their adjusted income for housing whereas HUD now generally requires 30 percent; we question the rationale for such inconsistency.

Question:

Is it possible to construct and finance multifamily housing under Title II of S2047? Can you explain how it would work?

Answer:

Title II of S2047 does not preclude the construction of multifamily housing; however, there is little description of exactly how such a program would work.

Question:

Do you feel that development caps lead to the overbuilding of homes? Is a mandate to build the maximum number of homes adequate to ensure that the effect of Federal dollars is maximized? What do you feel is a reasonable limit?

Answer:

As you know, HUD has recently issued final regulations placing a development cost cap on its current public and Indian housing programs. Our experience suggests that a cap coupled with adequate competition and less Federal regulation will result in reduced costs. Our experience also suggests that a mandate to maximize the use of Federal dollars to build the maximum number of homes is insufficient without such controls. Such cost containment

policies should be based on use of the most cost effective technologies (for example, manufactured housing) and the elimination of Davis Bacon requirements to aim to reduce National average per unit costs to the $35,000 range.

Question:

Would multifamily housing be eligible under Title III, or is this title limited to single family housing?

Answer:

Title III of S 2847 does not specify that multifamily housing could be provided under this title.

Question:

Would the loans made under the BIA guarantee program have the same degree of access to the secondary market as FHA insured loans do?

Answer:

As I indicated in my testimony to the Senate Select Committee on Indian Affairs, S 2847 does not contain provision for the proposed loan guarantee program to have access to Ginnie Mae secondary mortgage markets. The FHA program does have access to the Ginnie Mae secondary mortgage markets which results in the availability of financing.

Question:

Does Title III of S 2847 provide interim financing for new construction of single family homes? Would this type of financing be provided through the FHA program as amended by S 2607? Is this component considered essential to the construction of new homes?

Answer:

Title III of S 2847 does not provide interim financing for new construction of single family homes which is considered essential to assure construction of new homes in remote locations. HUD will propose technical changes in S 2607 relative to the FHA program in Indian areas to authorize FHA interim financing, when necessary.

Question:

Currently the Secretary has the authority to grant individual waivers for the Minimum Property Standards as they apply to paved roads and other

infrastructure services. Will this waiver process be too cumbersome to allow the use of FHA on trust lands? Should we allow for a blanket exemption on reservations?

Answer:

In recognition of the unique cultural and geographical requirements in Indian areas, particularly in remote locations, the Department will look favorably toward general exemptions of MPS on trust lands when such exemptions do not jeopardize the durability, structural soundness, and energy effectiveness of the home for the mortgage term.

Question:

Please identify any additional technical difficulties with this legislation.

Answer:

- S 2847 does not provide income limits for family participation. Therefore, a substantial number of low but not very low income families could be served under Title I and receive "free" housing. Title II of S 2847 not limit the income level of families eligible under this title. Therefore, middle and higher income families could be receiving a higher subsidy for housing than merited.

- In addition to the lack of lender incentives to use Title III, S2847 has numerous technical difficulties. The bill calls for use of a local prevailing interest rate rather than a national market rate, which will add administrative complexity and extra administrative costs to the program. The bill also provides no mortgage limits which has a potential for abuse and excessive costs in cases of defaults.

- S 2847 provides no solution for how to deal with a family on tribal or individual trust land who has defaulted on its homebuyer or mortgage and either has no trust assets or for which such trust assets have been exhausted. The bill does not specify if the family, under these situations, would get evicted or if its land, particularly if individually-owned, would be jeopardized.

I hope I have answered your individual questions. I look forward to an ongoing dialogue on a future Indian housing program.

Sincerely,

Philip Abrams
Assistant Secretary

Senator SCHMITT. I just want to assure you that on the Banking Committee side we are doing everything we can, and have pending legislation to put money where our mouth is. We encourage and assist HUD in streamlining this process of making housing available. It is important to recognize the essential problem in the use of loan authority on the reservations. It has been described by Mr. Abrams. The gap that is created by the lack of an individual having title on the reservation land has to be taken into account in whatever legislation the Congress may enact.

There are alternative ways of filling that gap. The Banking Committee believes it has provided the authority necessary for FHA and VA loans to be made on the reservations by substituting a tribal obligation for title. I believe that is the simplest way to say it. That does bridge the gap as far as we can tell. We would encourage prompt Senate enactment of that provision. Whatever else we may do, I think that it is important to use this action as a starting point. It offers a precedent for whatever other legislation may be enacted by the Congress.

I want to thank you for letting me join you for these hearings, and I will be chairing at 1 o'clock when we continue.

Senator COHEN. Thank you very much, Senator Schmitt. Mr. Abrams, thank you; No. 1, for your patience, and second, for your testimony. We always welcome it. Thank you.

Mr. ABRAMS. Thank you, Mr. Chairman.

Senator COHEN. Our first panel will consist of Ross Swimmer who is accompanied by Nathan Young, Phillip Martin, and Roy Cleveland, who I believe is accompanied by Ferdinand Notah and Ray Etcitty.

Let me indicate that I am scheduled to be at another meeting at noon, which I will stretch to 12:15. However, from 12:15 on I will call upon the legal counsel and the chief of staff here to complete your testimony and ask you any questions that they might have. I would intend the committee to recess at 12:30 and then come back in at 1 at which time Senator Schmitt will then be chairing the hearing. Hopefully, we can finish by 12:15. If not then we will pick it up at 1, and you can complete the testimony then. We have one more panel after this one, and Senator Schmitt can only be here from 1 to 2. I will be over on the House side testifying for the Judiciary Committee. So it is getting fairly complicated, and we are running over because of the length of the testimony this morning.

If you can shorten up your presentations it would be appreciated.

Mr. Swimmer?

## STATEMENT OF ROSS SWIMMER, PRINCIPAL CHIEF, CHEROKEE NATION OF OKLAHOMA, ACCOMPANIED BY NATHAN YOUNG III, DEPUTY DIRECTOR, LEGAL COUNSEL, CHEROKEE HOUSING AUTHORITY

Mr. SWIMMER. Mr. Chairman, I wish to thank you for the opportunity to appear here today and to present testimony at these hearings. My testimony is in written form. I will not delay you by trying to read that. I think it is self-explanatory, and there are specific things in there that might be of interest to the committee. I would make one

correction. I had referred to House bill 5988. It actually was Senate bill 2847. Other than that, I hope that the testimony is correct.

Senator COHEN. Without objection, a copy of your prepared statement will be inserted into the record.

Mr. SWIMMER. I think it is a privilege to be here today and to be here with my colleagues from Indian America. I am the principal chief of the Cherokee Nation of Oklahoma. We are the second largest tribe in the 50 States, second to the Navajo, and I believe that the Navajos are also represented.

We also are the largest Indian housing authority in the United States. We have the greatest number of units under management, approximately 3,800. We also have one of, if not the lowest delinquency rates of any Indian housing authority and probably others. It is just around 5 percent. In other words, we have been doing a pretty good job of developing Indian housing for our area.

I hasten to add that one of the things you will find in these hearings is that Indian tribes vary from State to State, from tribe to tribe, from management to management. We are not a reservation tribe. We have a jurisdictional operating area. We also do have a substantial amount of trust land. and we have individually allotted land that is held in trust by the U.S. Government for the benefit of the individual Indian family, which does create some of the same problems that reservation tribes face, although we do have the ability to access some of the other HUD programs more easily or readily than some of the reservation tribes do.

There are several things I would like to mention about the bill and certainly would like to have included in the bill. I think that the bill has been fairly well explained. If there are any questions I would be happy to get into that as far as the Indian perspective of the bill is concerned. However, the bill has been discussed quite thoroughly, I think, by the administration and different people testifying.

First of all, I think the bill should serve federally recognized tribes. It is intended to do that. It is intended to put the housing for those tribes and tribal members at the seat of government, wherever those tribes are located.

A couple of things that are not in the bill that I would like to see addressed through possible amendment to the bill are: No. 1, that a force account be permitted by those housing authorities, housing agencies, tribal agencies, or whatever we are going to call it, that the entity that is formed by the tribe be permitted to construct this housing, if they have the capabilities of doing so, after some determination that the Bureau might be willing to make.

We have found this in a recent project to be very successful. In fact through a self-help concept—not just mutual help but through an actual self-help, real, live, build your own house project—we have been able to bring our housing costs down to around a $35,000 per unit level. This is under the existing HUD program although we had to spend about a year getting special permission to do it. There are ways that these things can be done and that housing costs can be minimized with a little bit of innovation and cooperation from the different agencies.

No. 2, I think that the concept of the housing bill should permit an ability to contract the housing program from the BIA just as the

ability to contract other programs under self-determination is there, again with the demonstrated ability of the tribes to do so. As was testified to earlier, the elimination of Davis-Bacon as a requirement for construction in Indian areas, I think, should be included or at least be optional in the bill.

I think that the Indian people have waited long enough to have some kind of solution proposed to the Indian housing program. Certainly HUD attempted to do this in past years. It has been met with limited success mostly because it took an existing HUD program that was not designed to work in Indian country and rigged in such a way as to try to make it work in Indian country. The redtape has been terrible.

It was not until recent efforts a few years ago by our Senator from Oklahoma that we were finally able to get an Indian housing branch, so to speak, at the area office in Oklahoma City. Before that our housing program was considered a stepchild, and it was thrown into a general morass of other HUD programs. We simply had a very difficult time getting any kind of housing out.

Therefore, I think that the validity of putting a housing program somewhere in an agency that is dealing presently with housing and with Indians makes sense. I have the same fears and trepidation of moving from one agency to another, one that is not as experienced perhaps as the agency which is dealing with Indian housing, after all the work we have gone through to try to get HUD educated as to how to do Indian housing. However, at the same time the Bureau of Indian Affairs does operate a home improvement program which is an integral part of this program, and without too much difficulty they should be able to administer a housing program for Indian tribes in reservation areas at least as well as is being done by HUD.

The other thing is that obviously with the administration's attitude they are going to delete Indian housing and not fund it, and we are being asked, as I hear today, to wait for what might happen in 1984, that good things are coming. That is more than one can believe and more than one should be asked to believe. We have heard those promises before, and I do not expect the 1984 budget to be any greater than what you or your colleagues expect it to be. I think it is going to be a tight budget, and I do not think that HUD right now has any concept at all of putting Indian housing into that budget as a separately funded program.

The FHA insurance concept is not workable. I also am a banker by trade, and I can assure you that there has to be due process. When somebody defaults on a payment, you cannot simply go to the bank and say that here is their money. They are going to take the house over. That individual has a right to some action in court, and that is where we get into conflicts with tribal courts versus Federal courts, State courts, and the land problems and everything inherent.

I think that the talk is good. I am glad to hear HUD is moving in that direction, that they would like to do something. However, I do not think that we can realistically expect that to happen. On the other hand the Bureau of Indian Affairs is familiar with the trust problem. This bill addresses those trust problems, and it addresses the things that we need in there to provide housing in Indian country.

With that I will turn it over to my colleagues on the panel. I can answer any questions you might have.

Senator COHEN. We will proceed as you wish.
[The prepared statement follows:]

PREPARED STATEMENT OF ROSS O. SWIMMER, PRINCIPAL CHIEF OF THE CHEROKEE NATION OF OKLAHOMA

Mr. Chairman and members of the select committee, I am pleased to have been given the opportunity to present testimony, on behalf of the 32,000 adult members of the Cherokee Nation of Oklahoma and the Board of Commissioners of the largest Indian housing authority in the country, in support of Senate Bill 5988, the Indian Housing Act of 1982.

In the mid-1960's, the dream of obtaining safe, decent, sanitary housing, a dream which was extended to all other Americans by Congressional Act 25 years earlier, was offered to Indian people. Our dream became possible when Congress amended the regulations governing the Department of Housing and Urban Development's low income public housing program by establishing a special section within HUD to deal with the unique problems of Indians, problems which arise because of the special relationship between Indian Tribal and the United States governments and the places—primarily reservations in remote America—where Indians live. These amendments had the ambitious goal of solving the so-called "Indian housing problem" within 10 years, by targeting a specified number of units of public housing for Indian people.

In spite of this ambitious program and the belief that the Indian housing problem could be resolved in 10 years, we find, 20 years hence, that, by the Government's own calculations, more than 40 percent of all Indians live in substandard houses. According to a 1978 study by the Cherokee Nation and Bureau of Indian Affairs, more than 10,000 Cherokee families live in homes that fall below minimum government standards for habitability. Despite these grim facts and the failure of the HUD-administered housing program to adequately address the Indian housing problem, the administration has proposed no alternative programs and has not included Indian housing programs, in general, in its fiscal year 1983 budget request.

The initial plans of the Government to address the Indian housing problem through amendments to public housing legislation appear to have been well-intentioned with their inclusion of such programs as the mutual help and low-income rental housing programs. Because the regulations governing the administration of general public housing programs were not amended to take into consideration certain characteristics peculiar to Indian tribes, however, the program was destined to encounter serious problems which have inhibited its success and have contributed to the need for S. 2847.

One of the problems which has aroused the most concern in Indian country and Congress is the high cost of constructing public housing on Indian land. It has been estimated that the average cost of constructing an Indian HUD house in fiscal year 1983 will be about $72,000 compared to $60,000 for a non-Indian HUD home. These high costs are attributable to:

1. The regulation which requires HUD-constructed homes to adhere to national minimum property standards rather than local or regional building codes;

2. A method of financing HUD-constructed homes through which the government sells 30-year bonds, thereby incurring an unnecessary long-term interest expense;

3. The failure of the Bureau of Indian Affairs, Indian Health Service and HUD to enter into cooperative agreements whereby the former agencies, also responsible for Indian housing and sanitation facilities, would coordinate their housing construction, inspection and legal assistance programs with those of HUD (The failure of the three agencies to cooperate in providing Indian housing assistance has also cost the federal government millions of dollars, unnecessarily, in triplicate program administration fees.); and

4. The Housing Act's requirement that HUD contractors pay Davis-Bacon wage rates, which add an estimated 10 to 15 percent to the cost of each new HUD house.

The second problem which is of great concern throughout Indian country and which has contributed to the failure of the Indian housing program to capture full Congressional and administration support is the excessively high rate of tenants who are delinquent in their payments. This problem, too, is rooted in the failure of HUD regulations and administrative practices to respond to characteristics unique to Indians.

1. When the initial public housing legislation was enacted in 1937, Oklahoma passed laws which created municipal and county housing authorities. As are the locales in which they are situated, the housing authorities were considered "creatures of the State". When the Federal Housing Act was amended to include Indians as eligible to receive HUD housing assistance, the State law was amended to enable Indian tribes to similarly organize housing authorities. Any Indian housing authority so organized retained the status of a State agency, although, unlike municipal and county governments, tribal governments are not creatures of the State, but enjoy a unique relationship with the United States.

HUD's administrative practices have propelled this oversight into a problem: by ignoring the traditional social and political role of tribal governments, preferring instead to isolate Indian housing authorities from these governments, HUD has alienated the tribes from lending the support they should give to the collection of delinquent payments.

2. With eligibility to occupy a HUD-constructed house being based upon a low income level and the absence of standard housing constructed and financed through private sources and with the poverty and lack of adequate private housing rampant throughout Indian country, Indians have no difficulty in qualifying for HUD housing.

Since HUD housing payments are based upon a sliding scale that is tied to an occupant's income, a person who initially meets the eligibility criteria and later obtains a job is penalized for bettering his/her family's condition. Most Indian housing authorities are sufficiently socially and politically attuned to realize that, while HUD allows them the option of evicting or increasing the payment of a wage-earning occupant, the latter is the only viable choice they have. Faced with a much higher payment than they originally anticipated and which they can not afford, the now-working occupants become (and stay) delinquent in their payments.

As the rates of delinquency skyrocket, HUD blames the housing authorities; the housing authorities blame the tribal governments; and the tribal governments blame HUD and the housing authorities.

S. 5988 proposes a comprehensive Indian housing program which would address all of the factors which contribute to the high cost and excessive delinquency rate attendant with the present HUD-administered program. By vesting Indian Tribal governments with the responsibility for directly administering the housing programs, those tribal governments will be answerable to their voting constituents for keeping the cost of each house's construction within reason, thereby increasing the number of homes which can be built with the tribe's allocation, and for invoking acceptable sanctions against those who become delinquent in their payments. Delinquencies are further controlled by section 209 of the act which limits annual upward adjustments to no more than 50 percent of the occupant family's current payment. In the event that an occupant does become delinquent, the Secretary of Interior is empowered, by section 205 of the act, to attach the delinquent individual's or tribal trust land to recover the debt.

By creating a revolving fund through which the construction of Indian homes will be financed, the Government will not incur the costs associated with the current financing procedure in which interest-bearing bonds are sold with 30-year maturity dates.

By consolidating all of the programs designed to assist in the construction and improvement of Indian housing into one agency, services will be better coordinated (and less costly) and the Government will avoid the unnecessary cost of maintaining three bureaucracies with one goal: the improvement of Indian housing conditions.

By eliminating the existing requirement that Indian housing contractors pay Davis-Bacon wage rates, the cost of constructing an Indian house under S. 5988 will be reduced by 10 to 15 percent.

In addition to correcting many of the weaknesses inherent in the current Indian housing program, the comprehensive program which would be authorized by enactment of S. 5988 addresses several areas of housing need which are now neglected.

1. The Bill provides a statutory base for and ensures the continued existence of the housing improvement program, currently administered by the Bureau of Indian Affairs. We have found the HIP program to have been an extremely cost-conserving and effective program which allows us to renovate and modernize homes, particularly those occupied by the elderly, which might otherwise have required demolition and the expense of constructing a new home.

2. Section 218 of the bill authorizes tribal governments to use funds from the Indian Housing Finance to pay up to 10 percent of the purchase price of a house as a downpayment for privately-constructed and conventionally-financed housing. This provision would enable Indians, regardless of their income level, to buy that rarest of commodities—conventionally-financed housing—which has almost become extinct in Indian country.

3. Title III of the bill establishes a loan guaranty fund which will enable Indians whose access to conventional sources of housing financing has been restricted because of the lender's unwillingness to lend money for which he has no collateral, to access that financing. Through the fund, the Government will guarantee up to 100 percent of the unpaid principal and interest due on any loan made to an Indian for the construction or acquisition of a house on trust land. In the event of default, the local lender, as is the usual case, is required to exhaust all of his remedies before he may exercise the guarantee.

In summary, S. 5988, if enacted, will establish a comprehensive housing program which addresses all of the housing needs existing today in Indian country. Through local control of financing, by using local construction codes, by building houses which are better suited to the needs and wants of the families which will occupy them, by eliminating the burden of Davis-Bacon wage rates and through vesting authority for the program's administration in the government closest and most responsive to the eventual occupants, the government can operate an effective Indian housing program at a cost which is much less than the current program.

Senator COHEN. Mr. Martin.

## STATEMENT OF PHILLIP MARTIN, CHIEF, MISSISSIPPI BAND OF CHOCTAW INDIANS

Mr. MARTIN. Thank you, Mr. Chairman. My name is Phillip Martin. I am the tribal chief for the Mississippi Band of Choctaw Indians. I am also president of the National Tribal Chairman Association. This week we are having our convention, but I felt that this bill was very important. I felt I should be here and support Senator Cochran in his presentation. I understand that if the Senator did not take the leadership in sponsoring this bill we probably would not be here today. I am very thankful that he did this for the Indian people.

Everyone has made a good statement here, with the exception of a few, on behalf of this bill. I think it is time that a new idea was put in place about Indian housing, although Mr. Abrams tried to convince the committee that HUD has recognized its past mistakes and is going to do something about changing and providing housing for Indian people throughout the country.

I do not agree entirely because since Mr. Abrams has been in office, we have been trying to work with him. We have recommended some changes. We know the various rules that are making it hard for Indians to acquire the housing that they need. Very little contact was made with HUD by the Indian leadership to institute a change. I do not think his idea of the FHA is going to be the savior. I do not think so. I do not think housing should be in the community development block grant. I think it will eliminate some of the good things that the community development block grant is doing now by helping tribes to establish public facilities that they need on the reservation. I do not think those kinds of programs would be eliminated. This is because if they put additional money—a small amount of money—into a block grant program, tribes are going to want all of it to go to housing. I do not trust that particular aspect either.

I think that the bill putting a lot of responsibility on the tribal government is very good because all of the HUD housing in the past has been primarily aimed at local housing authorities. This has caused cross purposes within the tribal government and the housing authority. However, I think that on the reservations the tribal government is the supreme group. I think they should have the responsibility and be responsible for any transactions that are made, and be responsible for establishing their own rules and regulations.

Under this bill I do not think that the Bureau should have all of the power to make regulations. I think some decisionmaking should be done through the tribal government in terms of eligibility, procedures for operating the housing authority. Given those kinds of opportunities, I think most tribes will be positive and will work to make it work.

Another good feature that I like is the mortgage opportunity. I think that we have enough people on most reservations, at least 10 percent, as I understand it, who have incomes but have been deprived of the opportunity for housing because they are not able to make a loan because of the trust status. If individuals could go to the bank and get that 90-percent guarantee, I believe that would speed up housing. I think the costs of that have to be negotiated beween the parties. I do not think you can set a limit on the cost of a house. I believe good sense will dictate what an individual can afford to pay when you start to go into building a house.

You might consider a higher income as well as a minimum. Sometimes you can build a house so cheap that in the long run it would not be worth it. I think that the ideas of having a sanitary and safe house is good, but we should have some kind of rules regulating those kinds of things.

As for Davis-Bacon, I think the tribal government should be able to set its own wage rate in their own locale. I think that Davis-Bacon has been designed not to help Indians but maybe the labor groups.

In summary, I would strongly urge the enactment of S. 2847. It would strengthen tribal government, reduce Indian housing bureaucracy, and most importantly provide relief for nearly half of all Indian people in dire need of safe and sanitary housing.

Thank you.

I may want to send in another statement, and I could respond later in more detail. However, I would like to have a copy of my prepared testimony made a part of the record.

Mr. WOODCOCK [acting chairman]. Without objection, a copy of your prepared statement will be inserted in the record at this point.

[The prepared statement follows:]

PREPARED STATEMENT OF PHILLIP MARTIN, CHIEF, MISSISSIPPI BAND OF CHOCTAW INDIANS

My name is Phillip Martin, and I am the elected chief of the Mississippi band of Choctaw Indians, a federally-recognized tribe of some 4,800 members in east central Mississippi, as well as the current president of the National Tribal Chairmen's Association, or NTCA. I flew up here just briefly to make this testimony, as the 10th annual convention of NTCA is currently underway in Nashville, Tenn. Although the board of directors of NTCA has adopted a position supporting S. 2847 and its House of Representatives companion bill, the convention has not yet taken a position on the matter. I am hopeful they will do so today or tomorrow, and I will forward the committee a copy of their position when they do so.

But because of this I am addressing you today more as chief of the Mississippi band of Choctaw Indians than as NTCA president.

We are extremely pleased that the Congress has taken steps to obtain a comprehensive view of the Indian housing situation and is trying to bring some measure of reason and coordination to an effort which is currently fragmented and oftentimes confusing to tribal, and to the Federal government. We in Mississippi are personally grateful to Senator Thad Cochran for having introduced the legislation in the Senate and to cosponsors Senators Domenici, Andrews, and Nickles.

Indian housing conditions are the worst in the Nation, with census figures indicating that 49 percent of all Indian families live in substandard housing. The total number of substandard units occupied by Indian families has not fallen below 50,000 in the last decade and is currently estimated at around 60,000. Latest figures from the BIA indicate that 31,400 families have no housing at all, either living in tents or cars or doubling up on a temporary basis with other families.

Addressing these problems through the Housing Act of 1937 has not proven adequate. And although S. 2847 does not discuss the question of HUD-administered housing programs, we are all aware they will be affected if this bill is enacted. HUD has always relegated Indian housing to a "step-child" status. The creation of offices of Indian programs in selected HUD regional offices in the closing days of the previous administration has been a great help bureaucratically, and many Indian programs at the local level have improved because of this. But the President's yearly requests for zero units of new Indian housing, if adopted, would certainly leave these offices of Indian programs little to do.

Should the President's budget proposals be adopted, S. 2847 would do much to fill the gap.

Perhaps the most appealing feature of the bill to me, as an elected official firmly committed to the policy of Indian self-determination, is the flexibility given to tribal governments in the establishment of the tribal housing agency defined in section 3(10). The classic urban housing authority structure is currently being imposed on tribes through the HUD programs, a structure totally foreign to most rural reservations. This has caused a high level of dissension at the reservation level, and at many times has led to tribal governments and Indian housing authorities working at cross purposes. On the Mississippi Choctaw reservation, we have been able to make the structure work only through a constant effort by both sides to make the Housing Authority accountable to the elected tribal government. S. 2847 would allow tribes the option of continuing the Housing Authority structure or creating a new structure more closely related to the specific needs of the individual reservation. This or some other legislation, however, should make clear that if a tribe decides to designate an agency other than its Housing Authority as tribal housing agency, and if the HUD Indian housing program is done away with, the new housing agency could be made legally responsible for the HUD units on the reservation.

For the first time, the proposed Indian Housing Act of 1982 addresses the problem of privately-financed housing construction on trust land paid for by families through mortgage, through the provisions of title III on loan guarantee. This problem has caused some tribes to begin to split along class lines because the higher income people were forced to locate off-reservation, while lower-income tribal members were given safe and sanitary housing on-reservation. An estimated 10 percent of all Indian families, those at the upper level of the labor force, are in this situation of being able to afford a private home construction loan, but not being able to obtain one through banks, the Farmer's Home Administration, or the Veterans' Administration.

During committee debate on the House companion bill, the subject of Davis-Bacon wage rates in housing construction received considerable attention. It is our position that construction wage rates should be set by the tribal government based on a survey of rates paid within close proximity to the reservation, rather than using these Federal rates that are calculated over areas which include large urban centers. I might note that the current HUD program is the only Federal public housing program building single-family homes that requires the use of Davis-Bacon

To sum up, enactment of S. 2847 would strengthen tribal governments, reduce the Indian housing bureaucracy, and, most importantly, provide relief for nearly half of all Indian people in dire need of safe and sanitary housing.

Thank you.

Mr. WOODCOCK. We will proceed to Mr. Roy Cleveland, the executive director of the Navajo Housing Authority. I understand that he is accompanied by Ferdinand Notah, the assistant director of the Navajo Housing Authority; and Ray Etcitty, director of the Navajo veteran housing program of the Navajo Veteran Commission.

Please proceed.

## STATEMENT OF ROY CLEVELAND, EXECUTIVE DIRECTOR, NAVAJO HOUSING AUTHORITY, WINDOW ROCK, ARIZ., ACCOMPANIED BY JOHN H. SCHUELKE, LEGAL COUNSEL, NAVAJO HOUSING AUTHORITY

Mr. CLEVELAND. Thank you, Mr. Chairman. Before I read my statement, I would like to request that a statement on behalf of the Navajo Veteran Commission, the Navajo veteran housing program, be made a part of the record.

Mr. WOODCOCK. Without objection, a copy of the statement on behalf of the Navajo veteran housing program will be made a part of the record at this time.

[The statement of the Navajo veteran housing program follows:]

PREPARED STATEMENT OF RAYMOND C. ETCITTY, VETERANS HOUSING OFFICER, NAVAJO VETERANS HOUSING ASSISTANCE PROGRAM

Mr. Chairman and members of the committee: I appreciate this opportunity to represent the Navajo Veterans Commission, Navajo Nation, in testimony regarding the housing needs of the 12,876 Navajo veterans, 2,196 widows and 1,212 children of deceased Navajo veterans who reside on the Navajo Reservation.

For the record, Navajo Veterans have compiled an extraordinary record of military service on behalf of the United States; Presidents from Calvin Coolidge to Ronald Reagan have expressly commended the Navajo people for their bravery, courage and personal self-sacrifice.

Recently, the U.S. Government demonstrated a new willingness to express the Nation's indebtedness to the Navajo Nation for the contributions of its veterans. On July 28, 1982, President Reagan signed House Joint Resolution 444 into law as Public Law 97-225, designating August 14 of each year as Navajo Code Talkers Day.

Despite public acknowledgements such as this, Navajo veterans have never been able to gain treatment and benefits from the Federal Government on a parity with other non-Indian veterans and in many cases have been totally excluded from key benefits and programs instituted expressly for veterans; foremost among these are various housing benefits, including home loans.

Responding to the special housing needs of Navajo veterans is particularly important because of the grave unemployment and acute hardship which persists within the Navajo Nation. Such a situation is particularly ironic since the Navajo people have contributed so significantly to the military security of the United States.

On February 10, 1982, the Navajo Tribal Council created a Navajo Veterans Commission. It vested the commission with the responsibility to assess the housing needs of Navajo veterans and appropriated certain matching funds as start-up moneys for a housing assistance program.

But the tribe cannot provide such funds every fiscal year due to its limited budget, revenues, and resources.

However, this is both the Federal Government's and, the Tribe's responsibility. The U.S. Government has taken no positive action to insure that Navajo veterans have a realistic opportunity to participate in housing assistance programs which are made available through the Veterans Administration. Some Navajo veterans have enjoyed full-time and steady employment. They should be eligible for privately financed home construction and purchase loans. Yet, the Veterans

Administration Home Loan Guarantee program is not available on the reservation because of the unwillingness of banks and lending institutions to extend such credit even with a Veterans Administration loan guarantee. The Navajo Veterans Commission is attempting to persuade the Veteran Administration of the need to establish a regional office on the Navajo Reservation. If such an office existed it would be able to overcome the reluctance of banks to extend credit to Navajo veterans as well as to provide an example that nonveterans who are good credit risks can, and will, repay such loans.

In summary, there are two major categories of need in the area of veterans housing on the Navajo Reservation: public housing assistance for the unemployed or low-income veteran and privately financed housing for those who can afford housing but are not able to secure the necessary credit through no fault of their own. S. 2847 proposes to meet both categories of need by establishing a housing office within the BIA. The Navajo Veterans Commission takes no position on whether such Federal assistance should be in the BIA or HUD, but we would like to emphasize that the need is urgent and Congress should act to address these needs. If title III of S. 2847, the Indian Housing Loan Guarantee Fund was established, it would stand a good chance of making private financing available for Navajo veterans who could afford it. The authority for a 100 percent guarantee would obviously be more attractive to private lenders than the more limited guarantee available through the Veterans Administration. However, there should be no reason to force Navajo veterans to choose one or the other form of Federal guarantee authority; both should be available and I note that section 408 of S. 2847 provides that housing assistance under this Act shall not exclude Indians from being eligible for other federally assisted housing programs.

I would also like to point out that title III is funded for only $2.5 million in fiscal year 1984, $3 million in fiscal year 1985 and $3.5 million for fiscal year 1986 and 1987. I am told that $2.5 million in loan guarantee funds would make it possible for the BIA to guarantee loans for only 250 homes nationwide. Clearly, this would not meet the total need for privately financed homes on all reservations and would not eliminate the need for continued assistance from other Federal loan guarantees such as VA and FHA. However, the existence of a 100 percent loan guarantee through BIA may succeed in breaking down the reluctance of private lenders to make loans on reservations.

S. 2847 or an equivalent act of Congress could be the delivery system so urgently needed to provide housing benefits and home loans for Navajo veterans. I urge the committee to swiftly report it out and recommend its passage.

I would also like to submit for inclusion in the record the attached description of the Navajo Veterans Commission Plan of Action for the Navajo Veterans Housing Assistance program.

I would like to commend the members and staff of this committee, and your counterparts in the House of Representatives, for your hard work on this bill and your dedication to helping Indian people toward the goal of decent housing.

Mr. Chairman, thank you for the opportunity to present testimony on behalf of the Navajo Veterans Commission. I would be pleased to answer any questions you may have.

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PLAN OF ACTION

NAVAJO VETERANS HOUSING ASSISTANCE PROGRAM

*Program description*

The Navajo Tribal Council by resolution CF-14-82 established the Navajo Veterans Commission and directed the Budget and Finance Committee of the Navajo Tribal Council to formulate a budget for a veterans assistance program including housing. The Navajo Veterans Housing Assistance program budget was formulated and approved by resolution BFY-156-82 of the Budget and Finance Committee of the Navajo Tribal Council with the following account numbers: (1) Administration, account number 5404; (2) Tribal Construction, account number 6872, and (3) Veterans Housing Loan, account number 8619.

*Approach/methodology/limitations*

The program will be a Navajo Veterans Commission high priority program administered by the Division of Community Development; the division programs

and departments, and the Office of Veterans Affairs will take applications into categories and sub-categories:

| *Categories* | *Subcategories* |
|---|---|
| World War I veterans | Disabled veterans. |
| World War II veterans | Partially disabled veterans. |
| Korean War veterans | Unemployed and low income veterans. |
| Vietnam War veterans | Special need and hardship case veterans. |
| Peacetime veterans | Widows/children of deceased veterans. |

The program will provide Navajo Veterans Housing Assistance in the following manner:

A. Minor repairs (reroof, weatherization, replace windows, doors, insulate walls and ceiling, repaint, flooring, etc.)

B. Major repairs (bring existing homes to present day standards, eliminate health and safety hazards, to electrical wiring, plumbing, etc.)

C. Additions to existing homes (to make the homes more livable to meet the families basic living needs, etc.)

D. New construction (to replace non-repairable homes, provide new homes to families without housing) PEP prefab houses are recommended.

The Navajo Housing Services Department will provide labor and technical assistance; water and sanitation department will provide technical assistance: Phoenix Energy Products (PEP) Co. will provide on the job training assistance for prefab housing construction; the Office of Veterans Affairs, Navajo Veterans Commission, will coordinate and monitor the program; the Veterans Housing program officer will provide for the daily administrative and supervisory functions of the program.

*Expected results and benefits*

Each Navajo veteran who qualifies and meets the Navajo Veterans Commission priority category and subcategory requirements will receive up to $6,000 in building materials and supplies if he is able to provide labor and is unemployed or a low income employee.

Special requests such as providing down payments on mobile homes and providing housing assistance off the Navajo reservation will be considered on its merits by the Navajo Veterans Commission.

The loan program will be administered by the Navajo Veterans Commission, assisted by personnel from the Division of Finance and Department of Justice.

Disabled, partially disabled, widow, and children of deceased veterans will receive whatever is necessary in terms of labor, materials and supplies or a prefab house which will eliminate waste of materials and supplies, time delay in starting construction and labor costs. PEP prefab houses will be purchased.

Special need and hardship cases will be determined by the Navajo Veterans Commission, Division of Community Development, and Chairman, Navajo Tribal Council.

The program will be flexible enough to insure that every Navajo veteran applicant will be considered on military service merit and character as well as the Navajo Veterans Commission priority category and subcategory requirements.

*Reporting/evaluation*

Pursuant to Navajo Tribal Council Resolution CF-14-82, the Navajo Veteran Commission will submit an annual report to the chairman, Navajo Tribal Council. Preclusive to the annual report, the Navajo Veterans Housing Assistance program within the Division of Community Development shall submit a full monthly report to the Navajo Veterans Commission on all activities associated with and relative to the Navajo Veterans Housing Assistance program for their review and evaluation.

Mr. CLEVELAND. Mr. Chairman and members of the Senate Select Committee, my name is Roy Cleveland. I am the executive director of the Navajo Housing Authority. I have with me John H. Schuelke, our legal counsel, to assist me in answering any questions from the committee.

I sincerely appreciate the opportunity to appear before this committee to provide you with the views of the Navajo Housing Authority pertaining to S. 2847 cited as the Indian Housing Act of 1982.

Before continuing I would like to express our deep appreciation to the entire committee staff for their efforts in developing this proposed bill. It is very gratifying to know that this committee is aware of the needs of the Indian people for a viable Indian housing program and is willing, in the face of budget reduction policies, to sponsor legislation to assist in solving the American Indian housing problems.

We would like to offer our comments and recommendations to particular sections of the proposed act.

The proposed legislation provides for a heating system with the capacity to maintain a minimum temperature of 60 degrees Fahrenheit. We believe the minimum should be increased to 68 degrees.

The proposed legislation provides for a minimum of 570 square feet for a family up to four members. This is not large enough. The minimum should be increased to 850 square feet with proportional increase based on the number in the family.

The proposed legislation must provide for sufficient funds to continue the Indian housing program at a sufficient level to make a meaningful commitment to the continuation of the provisions of the housing to the Indians.

The proposed legislation must provide for more efficient utilization of precious Federal dollars by allowing tribes some flexibility in tailoring minimum property standards to meet the needs of reservations and correspondingly lower the cost per housing unit.

The proposed legislation must avoid waivers of tribal sovereign immunity and not allow tribal trust fund reserves to be unilaterally attached.

The proposed legislation must take into account the specific needs of various categories of Indian housing, including veterans who have demonstrated military service to their country and the need for tribes to provide housing for categories of people who provide special services to the reservations such as medical personnel at hospital complexes.

Land is the basis of the Indian culture. We suggest the land should not be involved in such proceedings. Perhaps land could be eliminated from the guarantee program and just the loan guarantee be adequate security. Most tribes now have forcible entry and detainer laws which could be utilized.

The proposed legislation requires compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act—25 U.S.C. 450e. Provisions should be made to allow tribes to add requirements such as the Navajo Office of Navajo Labor, Labor Relations Manpower Utilization Requirements, and Navajo Business Preference to enable tribal members to benefit not only through employment opportunities but economic advantages on their own reservations.

Thank you.

Mr. WOODCOCK. Thank you for your statement. Your prepared statement will be included in the record at this point.

[The prepared statement follows:]

PREPARED STATEMENT OF THE NAVAJO HOUSING AUTHORITY, SUBMITTED BY ROY J. CLEVELAND, EXECUTIVE DIRECTOR

Mr. Chairman and members of the Select Committee on Indian Affairs: My name is Roy J. Cleveland. I am the executive director of the Navajo Housing

Authority. I have with me John H. Schuelke, our legal counsel, to assist me in answering any questions from the committee.

I sincerely appreciate the opportunity to appear before this committee to provide you with the views of the Navajo Housing Authority pertaining to Senate Bill S. 2847 cited as the Indian Housing Act of 1982.

Before continuing, I would like to express our deep appreciation to the entire committee staff for their efforts in developing this proposed Bill. It is very gratifying to know that this committee is aware of the needs of the Indian people for a viable Indian Housing program and is willing, in the face of budget reduction policies, to sponsor legislation to assist in solving the American Indian housing problems.

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The proposed legislation must avoid waivers of tribal sovereign immunity and not allow tribal trust fund reserves to be unilaterally attached.

The proposed legislation must take into account the specific needs of various categories of Indian housing including veterans who have demonstrated military service to their country and the need for tribes to provide housing for categories of people who provide special services to the reservations such as medical personnel at hospital complexes.

The majority of the people proposed to be served under title I of this program do not have the financial ability to pay. Any charge would create a hardship not an assistance. Therefore, any requirement of payments by individuals should be eliminated.

Indian Housing Improvement program, section 104, allows the sale of houses under the proposed act. The proposed act should restrict the sale to persons or entities first approved by the Indian tribe to preserve the trust status and control of their lands.

Section 205(c) prevents the Secretary from rejecting an application because an individual or tribe has no trust funds. This section is patently unfair to individuals or tribes with trust funds. It should be changed to treat everyone in the same manner.

Section 212(b) requires the Indian Health Service to monitor construction inspection. The tribe should be responsible for monitoring inspection of construction.

Section 213(b) requires a contractor's performance bond. It should require a contractor to provide a 100 percent performance and payment bond from a bonding company on the approved Department of the Treasury list of such companies for all construction methods including turnkey.

The irrevocable letter of credit required in the proposed legislation should be on a bank letterhead to be meaningful and protect the Indian tribe.

Section 309 provides for foreclosure in a court of competent jurisdiction in the event of default. The proposed legislation should require foreclosure in the tribal court or if there is no tribal court, then in a court of competent jurisdiction.

Title III speaks of foreclosure which implies taking the incidents of ownership through legal proceedings from one and transferring to another.

Land is the basis of the Indian culture. We suggest the land should not be involved in such proceedings. Perhaps land could be eliminated from the guarantee program and just the loan guarantee be adequate security. Most tribes now have forcible entry and detainer laws which could be utilized.

The proposed legislation requires compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e). Provisions should be made to allow tribes to add requirements such as the Navajo Office of Navajo Labor Relations Manpower Utilization Requirements and Navajo Business Preference to enable tribal members to benefit not only through employment opportunities but economic advantages on their own reservations.

Thank you.

Mr. WOODCOCK. I would like to call panel No. 2, which consists of Delfin Lovato, executive director, National Congress of American Indians; and Joe American Horse, tribal chairman, Oglala Sioux.

We do not seem to be able to locate the panel. Why don't we have the next person come up? Ms. Shield, are you ready to testify?

## STATEMENT OF ROBIN SHIELD, NATIONAL CONGRESS OF AMERICAN INDIANS, WASHINGTON, D.C.

Ms. SHIELD. I am Robin Shield, and I am with the National Congress of American Indians. I regret that Mr. Andrade, our executive director, is not here to give NCAI's testimony. I am going to do that in his place.

We want to thank Senator Cohen for taking an interest in the bill, Indian Housing Act for 1982, and for holding this hearing on it. We also want to thank Senator Cochran for introducing the bill, and Senators Andrews, Domenici, and Nichols for cosponsoring it. I think that is very encouraging. We are very encouraged by the sincere interest that these gentlemen have taken in the problems that tribes are facing with future funding for Indian housing and for continued Federal involvement support for Indian housing programs. We want to express our deep appreciation to them for that.

I am going to make my remarks very brief. We are submitting our statement for the record. I will not go into each and every point in our statement.

Mr. WOODCOCK. Without objection, a copy of your entire prepared statement will be entered in the record.

Ms. SHIELD. I want to comment on some of the statements that have been made here this morning. First of all, I want to state our position on one section in particular of the bill. We stated it before on the bill as it is in the House. We are very concerned about section 205 which concerns the attachment of tribal trust funds and individual trust funds.

I want to state that we are very much opposed to this provision, however, we recognize that there may be no alternative to that provision at this point. We do not have any recommendations to that at this point, but we do recommend that the deadline provision for the tribes to respond to the Secretary, once they have been notified that they are in default, should either be extended or authority given to the Secretary to extend the deadline or waive the deadline in cases where the tribe, for reasons beyond its control, cannot respond to or take care of the default problems.

This waiver has already been given to the Secretary under section 206(d) when dealing with award of contracts. There is the 1-year requirement. Given the seriousness of attachment of tribal trust funds, we feel that this would be a reasonable recommendation to be considered.

We also wanted to make a point about individuals with tribal trust funds being required to have them attached. We feel that anyone who has tribal trust funds would automatically be cleared or would be given quicker processing or clearance for getting a home than someone without, simply because the agency or the bureau would see that they have money sitting somewhere in a pot. There is no criteria for the individual to go through, or he or she is not judged on their ability to pay if they have a job, if they are making a good salary, and if they do have other funds that they can be paying from rather than requiring that their trust funds be attached.

We feel that there should be some clarification or requirements that individuals who are applying, who have troubled trust funds, meet some eligibility criteria and that their ability to pay based on income or what they are making be taken into account.

We also have a question about what happens if a tribe who has unobligated trust funds commits that or obligates that, the unobligated portion, to participate in the housing program but they need the money later on to use it for some emergency problem. Is there a legal impediment to them using that money. Can a banker or the Bureau come in and stop them from using the money in case there is an emergency? We have questions about that.

Other than those primary concerns that we have, as well as other recommendations that we have in our testimony—I do want to comment that in sitting here and listening to the comments that were made this morning, I do not know whether to take heart in having a program under the Bureau of Indian Affairs. I am glad that HUD is still very interested in running a program. Personally, I was not very confident in some of the responses by the representatives of the Bureau. They seemed uncertain as to the program, and I think it is very important that there was no show of confidence, that yes, they are going to be able to take this program and run with it.

On the other hand, HUD is proposing very complicated recommendations for a new housing program involving certificates and drawdowns. I do not think it needs to be that complicated to run a housing program. I think there are some good provisions in this Indian housing bill as it stands now.

That is really the extent of my comments. I will be happy to answer questions.

Mr. Woodcock. I just have one question for you, Robin. You say in your prepared statement that the National Congress of American Indians is the oldest and most representative national Indian organization in the country. I would like for you to comment on a concern that was raised in Mr. Abrams' testimony. His statement says that he believes that Indian people want to take advantage of the housing programs administered by HUD, the Veterans Administration, FmHA, and not to be relegated to dealing with a single agency. Have you, through NCAI, come across any concensus on the part of Indian tribes on that point?

Ms. Shield. I have not come across a concensus, but I have talked to individuals or representatives of housing authorities who have gone to different programs. You have to look at it this way. The two biggest programs right now are HUD, which provides the most money, and the Bureau. Then there are Farmers Home and VA. I think that there

have been situations where individuals have gone to Farmers Home and they have been discouraged because they are not getting any service from the field offices. However, I think that the fact that they went indicates that they are looking at different programs, that they want to see where they can get some assistance to meet their individual needs or the needs of the members of the tribe.

Therefore, I think the same as anybody else. You look to where you are going to find something that is going to assist you, and they have been going just primarily to HUD and to BIA because they carry the biggest programs.

Mr. WOODCOCK. Do you have a sense as to whether they would prefer to remain with that kind of alternative, or would they prefer to see a program operated by a single agency? I may be anticipating you a little bit. I am aware that NCAI is going to meet next week, and you may want to qualify your answers until the tribes get together and actually take a position on that.

Ms. SHIELD. Yes, I think that would be the best way to go.

Mr. WOODCOCK. I will leave that question open then, and when NCAI has taken a position on it, if you could apprise the committee of its interpretation and the tribes' positions, we would appreciate it.

Ms. SHIELD. I certainly will. Thank you.

Mr. WOODCOCK. Thank you.

[The prepared statement of the National Congress of American Indians follows:]

PREPARED STATEMENT OF RONALD P. ANDRADE, EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS

Mr. Chairman and members of the committee. My name is Ronald P. Andrade. I am the Executive Director for the National Congress of American Indians. With me today is Robin Shields, Housing Specialist for the NCAI. I want to thank you for allowing NCAI to present testimony on S. 2847, the Indian Housing Act of 1982.

The National Congress of American Indians is the oldest and most representative national Indian organization in the country today. Over 180 Indian tribes and Alaska native villages, whose combined populations total approximately half a million people, are members of our organization.

NCAI testified earlier this year before the Committee on Interior and Insular Affairs on H.R. 5988, the Indian Housing Act of 1982 as it was first introduced in the House. Our comments and recommendations have not changed much since that earlier testimony. NCAI recognizes the Indian Housing Act in both of its versions as a bold and innovative effort designed to increase the availability of housing to Indian people. The difficulties tribes have faced in the past with regard to meeting the housing needs of their people, as well as those they face in the future, are of monumental concern. We believe that the Indian Housing Act of 1982 is a positive measure that could potentially meet these tribal housing problems.

However, there are certain provisions contained in both versions of the bill which will have a serious adverse effect on tribes, and there is one provision in particular which we will remain adamantly opposed to: the attachment of tribal trust funds. We seriously question section 205 in its present form. A willingness to compromise tribal trust funds should not be a prerequisite to the securement of services under this act. We strongly recommend that other language be used or other methods less disastrous to tribes be sought as an alternative to the present requirement. However, if section 205 remains, we recommend that section 205(c) be amended. If a loss of trust funds is to occur, then a longer period of time—90 days—should be offered in order to effectuate remedial as well as long-term alternatives. We further recommend that language be added to this section authorizing the Secretary of the Interior to waive or extend the 60-day deadline in cases where a tribe cannot meet the 60-day deadline due to circumstances beyond its control. Similar authority has been given the Secretary under

section 206(d). We strongly recommend the same for section 205 given the seriousness of what is being proposed to the tribes.

In addition to the above, we propose the following amendments and recommendations to S. 2847 which we feel will alleviate many of the concerns that our member tribes have with the bill in its present form. We recommend that:

1. Section 3(5) be amended to specifically include Alaska Natives as defined by the Alaska Native Claims Settlement Act, 43 U.S.C. 1601.

2. The language for section 3(9)(ii) remain the same as in H.R. 5988.

3. Section 101(c)(2) be amended to state that contracting will be done through the Tribe by tribal contracting procedure rather than permitting the Secretary to contract directly with private construction firms. We feel that the bill as currently written permits the Secretary and the construction firms to bypass the Tribes resulting in an undermining of Tribal authority and self determination. It is further recommended that language be added to require the application of Indian Preference as specified in Public Law 93–638, section 7(b).

4. Section 203(c) be amended to allow the tribe to decide for itself whether or not it should establish a tribal housing agency, and include language stating that should a tribal government wish to administer the program itself then a waiver of sovereign immunity from suit would be required.

5. Section 211(c) be amended by deleting language authorizing attachment of tribal trust funds. In addition, given that the Secretary is permitted to place sanctions against a tribe, we recommend that the section be amended by changing the time from 30 to 90 days and language authorizing the Secretary to waive or extend the deadline in cases where a tribe cannot meet the deadline due to circumstances beyond its control. This would give the Tribe a fair opportunity to cure potential defaults.

6. Section 309(a)(1) be amended to specifically include tribal courts as court of competent jurisdiction in the event of foreclosure proceedings, and/or include language stating that an appropriate tribal forum will be utilized to resolve a foreclosure action before going outside of the tribe for resolution.

7. Section 401(c) be amended to specifically define the percentage of moneys appropriated for administration of the programs: "Not to exceed ——— per centum of funds appropriated under authority of titles I, II and III shall be used for employees costs and other administrative expenses of the Office of Indian Housing Programs," or add a new section authorizing administration costs.

8. Tribes be allowed to contract a'l or any of the programs under 638 contracting provisions, thus reducing the Bureau's costs involved with administering the program(s), providing gainful employment at the Tribal level, and affirm Tribal authority and self-determination.

9. There be the addition of a new section to title IV authorizing funding for repairs or new construction performed directly by the Bureau as authorized by section 101(c)(4). A separate source of money must be identified for this activity so that the primary program funds will not be affected. In the alternative tribes should also have authority to contract these activities from the Bureau under 638 contracting provisions. If tribes are allowed to contract it would further reduce the Bureau's costs involved with administering new construction and repair activities, provide gainful employment at the tribal level, and affirm tribal authority and self-determination.

10. Section 104 contain some assurances or guarantees that the houses built, acquired or repaired under this title will remain under the control and jurisdiction of the tribe upon whose lands they are located. In addition, provisions must be accorded to available tribal revenues and market demand in terms of ability to pay.

11. Section 209(b)(1) be clarified in relation to section 208(b). As presently written section 208(b) states that the agency "shall" require a family to lease or transfer its trust or fee land to the agency. Section 209(b)(1), however, states that the family must agree to lease or transfer its trust or fee land "if" required by the agency.

12. Since section 209(c) states that the house financed under this title could be reacquired by the tribe at "fair market value," prevailing market conditions, locations and utilization potential should be considered in appraising these units.

In closing we want to say that S. 2847 brings to the attention of everyone concerned the housing needs of Indian and Alaska Native people. These is a need for innovative methods to improve financing of Indian housing construction, acquisition, rehabilitation and repair. We encourage this and other committees

responsible for and concerned about the housing needs of Indian and Alaska Native people to continue to assist with seeking such methods for the betterment of all Indian and Alaska Native people. I will be happy to respond to questions at this time.

Thank you.

Mr. Woodcock. We will now hear from Ms. Antonia Cook, who is speaking for Joe American Horse, tribal chairman, Oglala Sioux, Pine Ridge, S. Dak.

## STATEMENT OF ANTONIA COOK, ASSISTANT DIRECTOR FOR INDIAN HOUSING AUTHORITY, PINE RIDGE, S. DAK.

Ms. Cook. Thank you. My name is Antonia Cook. I am the assistant director for the Indian Housing Authority at Pine Ridge, S. Dak. I am going to read Joe American Horse's testimony. We have submitted the testimony for the record.

Mr. Woodcock. Without objection, a copy of Joe American Horse's prepared statement will be entered in the record.

Ms. Cook. Honorable Senators, guests, and speakers, I am honored to have this opportunity to present testimony on Senate bill 2847, the Indian Housing Act of 1982, to the Senate Select Committee on Indian Affairs.

I am pleased that the Congress of the United States has seen fit to initiate legislation to provide safe and sanitary housing for Indians through a mechanism which conforms to the principles of local control and tribal self-determination.

I feel the concepts outlined in S. 2847 can provide the foundation for meeting the growing need for housing in Indian country while preserving the historical and special relationship Indians and Indian tribes have enjoyed with the Congress of the United States. Because healthy dialog is necessary for maintaining strong friendships, we welcome this opportunity to express our concerns with various provisions of S. 2847. I am also submitting detailed testimony for the record and will keep my oral comments brief.

I question the language in section 205 because of the potential adverse effects any attachments of tribal trust funds may have on, not only the operations of tribal government, but also on the very nature of tribes' relationships with the Federal Government. I object to the provision of section 220–3 which would require the tribe to assume responsibility for utilities in rental housing. Such responsibility could severely test the financial capabilities of my tribe as well as others. I think prudent management requires that the tenants share in those costs if they are financially able. The section should allow the option of tenant-shared utilities.

Further, I must enter my objection to section 406 because I feel that it would license the Secretary to meddle in areas of tribal government which have traditionally been internal to such tribal governments. The historical and special relationship that Indians and Indian tribes have enjoyed with the Congress of the United States must be based upon principles of full faith and credit for local control and self-determination. The provision in its present text would severely undermine the integrity of tribal governments.

Again, I wish to express my thanks for this opportunity to present testimony on S. 2847. I hope with strong, healthy dialog that the In-

dian tribes of this Nation assist the Congress of the United States in developing legislation that can be supportive of tribal self-determination. I am pleased with the provisions of S. 2847 and hope that my objections will be useful to the committee.

I wish to thank the Senate for taking this important step toward meeting the need for safe, decent, and sanitary housing for Indian families.

Thank you.

Mr. WOODCOCK. Thank you very much for your statement.

[The prepared statement follows:]

PREPARED STATEMENT OF THE OGLALA SIOUX TRIBE, PRESENTED BY JOE AMERICAN HORSE, PRESIDENT

The Oglala Sioux Tribe appreciates this opportunity to present testimony on Senate Bill 2847 "The Indian Housing Act of 1982" to the Senate Select Committee on Indian Affairs. We are pleased that the Congress of the United States has seen fit to apply the principles of local control and self-determination to a federal Indian housing program, as provided in S. 2847.

The Pine Ridge Indian Reservation, home of the Oglala Sioux Tribe, is located in south-western South Dakota, and has a population of approximately 15,000 members and residents living on the two million (2,000,000) acre reservation. A "Population and Labor Force Report" compiled by the Bureau of Indian Affairs with statistics available after the 1980 census showed our reservation as having sixty-six percent (66%) sub-standard housing and a need for an additional two thousand five hundred (2,500) housing units. With the average age of our on-reservation population being fourteen years six months (14/6), our need for additional housing will continue to grow at ever increasing rates.

Of the sub-standard housing units, many do not have potable water supplies within adequate or reasonable distances of the homes, consequently many residents haul drinking water over long distances or secure their supplies from creeks and streams of questionable health quality. Many of the houses constructed by the Department of Housing and Urban Development are seriously over-crowded, by an average of one hundred fifty percent (150%) over design capacity.

The Oglala Sioux Tribe has had a relationship with the Department of Housing and Urban Development (DHUD) for twenty-one (21) years and was the first tribal housing authority in South Dakota. While the federal housing program established under DHUD has enabled the Tribe to construct over twelve hundred (1,200) housing units on the reservation, the system for constructing housing projects has been cumbersome and fraught with bureaucratic manipulations. Houses were constructed, which met DHUD standards and guidelines, but not our local environment; a case in point are the all-electric houses built throughout the reservation on the premise that electricity was a renewable, cost-efficient energy source—these houses cost an average of three hundred dollars ($300) per month in electricity charges. While such an amount may not appear outrageous to the family earning the median income, low-income and fixed-income tenants must allocate the majority of their income to simply keeping warm, many times at the expense of having adequate food supplies.

Another problem we have experienced with the DHUD program, which we were pleased was not in S. 2847, is the method of financing projects by a number of units each having a predetermined number of bedrooms, rather than building the maximum amount of units possible with the funds available. The regulation of DHUD requiring that ten percent (10%) of the total project cost be allocated to architectural fees has reduced the amounts of funds available for construction.

The Oglala Sioux Tribe supports the concept of placing an expanded housing program under the Bureau of Indian Affairs. While our tribe has had, and continues to have, differences with the Bureau, their record of advocacy for tribes combined with a long history of delivering services to Indians provides them with a perspective of tribes which is conducive to progress. The enactment and implementation of Public Law 93-638 (The Indian Self-Determination and Education Assistance Act) has allowed the tribes to become more involved in designing and determining the BIA's services delivery system, thereby better meeting the needs of the tribes. We feel our interests will be properly considered and our

special relationship with the Congress of the United States better served by an agency with whom we have a long-standing relationship and established avenues of dialogue.

Finally, we feel the design of a federal indian housing program, as would be comp'ementary to other development strategies of the Oglala Sioux Tribe and not be isolated from the directions and plans of the tribal government.

We have organized the remainder of our testimony to follow the format of the bill and hope it provides the Committee with a clear understanding of our position.

DEFINITIONS

The Oglala Sioux Tribe is in agreement with the text of definitions and finds nothing contained therein which would unduly inhibit or restrict the Tribe in providing safe, decent and sanitary housing for its members and residents, in implementing the Act.

TITLE I—INDIAN HOUSING IMPROVEMENT PROGRAM

The authority provided in Title I will allow the Oglala Sioux Tribe to deliver housing improvements to the truly needy families of our reservation, without undue expense to such families. The provisions of Sec. 103 & 104 will insure that improved houses are not cheaply bought up by unscrupulous individuals, while insuring that the IHIP fund is preserved. We think the concept of a "revolving fund" has merit. We are in agreement with the provision in Sec. 104 which gives the Tribe the right of first refusal on the sale of improved houses located on tribal trust lands. While we feel the amount of funds authorized for appropriations under this Title are less than adequate when viewed from a national perspective, we feel that overall the Title has merit.

TITLE II—INDIAN HOUSING FINANCE FUND

The authority provided in Title II will greatly assist Indian families who have experienced problems in accessing conventional financing mechanisms; on our reservation this has usually been due to the fact that their lands are in trust status or because they live on a reservation, and whose numbers are far greater than the availability of houses under the Department of Housing and Urban Development's projects. We support the concept of not legislatively requiring limits on income to participate under this title and feel that an assessment of a participating family can be better conducted with periodically up-dating requirements.

We feel the provisions of Sec. 202 which allow the affected tribe to design a local organizational and administrative structure and determine its own priorities are based on the principles of local control and self-determination. We further support the policy of supporting long-term planning efforts within tribal governments and organizations, as required in this section.

The Oglala Sioux Tribe has been involved in financing arrangements over the past fifteen (15) years with the Farmer's Home Administration (FmHA) and as a result of this arrangement, has obligated the majority of its land lease income for many years to come to this debt. Unlike many resource rich tribes, our tribe has not exploited its natural resources other than grasses and farm lands, and does not have readily available income. We, therefore, hesitate to offer our full support to Sec. 205 because of the potential repercussions it may have throughout our government and economy.

Further, as the Committee may be aware, our Tribe was not a party to the Black Hills Claims Judgement and we are uncomfortable with allowing ourselves to be placed in a position where the Secretary may attempt to rule that the Oglala Sioux Tribe were party to a claim and attach monies based upon that understanding, with the possibility of seeking to quiet our title to treaty lands, through a "back door approach". A possible avenue of resources, which we have available at the present time and are increasing, is the Tribe's tax income and we would be more receptive to assigning this income than trust funds.

In Sec. 209 we question the need for the Indian family to transfer title of its trust lands, prior to the construction of a house, to a Tribal Housing Agency at such agency's discretion. We think security can be established through the execution of a mortgage instrument of trust lands to the "Agency, but the transfer of title of trust lands would become effective only upon default. The principle to

be preserved here is not to unduly alienate any individual owner's title to trust lands. Further, we feel this discretionary authority should either be removed for individual trust lands prior to finalization of the Bill; we strongly feel this should not be left to administrative rulings. Accordingly, we feel the authority to mortgage the specific lot, or perhaps a two acre tract to the Agency would meet the security requirements and not separate title of lands from individuals. The Constitution of the Oglala Sioux Tribe mandates that no tribal lands shall be sold or encumbered, because of the nature of undivided heirship interest the tribe owns some interest in the majority of lands on the reservation, there must be resources appropriated to the Realty Branch of the Bureau of Indian Affairs if any land transactions are to be timely processed.

Also in Sec. 209(b)(2)(3), we feel there should be an allowance in charges for energy and water costs associated with the house, which will be deducted from the amount of the required payment. Under Sec. 220(3) we object to the provision requiring tribal responsibility for utility costs in rental housing. Last year the DHUD low-rent projects were converted to tenant paid utilities with each tenant offered a utility allowance, based upon the size, age, and appliances (propane or electric) of the house, which is deducted from the rent and this mechanism has worked well on our reservation, and can be reproduced under another housing program. The sheer weight of utility costs for rental housing can severely strain most tribal governments budgets.

We feel there must be a provision developed under Sec. 220 to allow the construction of rental complex support services and facilities, such as; day care centers, elderly complexes with requisite dining and community rooms, and park or recreational/playground facilities, with a structure for paying for such items.

Other than the above noted objections, we feel Title II has considerable merit.

TITLE III—INDIAN HOUSING LOAN GUARANTEE FUND

The Oglala Sioux Tribe feels the provisions and authorities set forth in Title III will assist those Indian families on our reservation who have the financial means for qualifying for conventional loans but who have not been able to secure such loans because their lands are held in trust. We feel when such houses, constructed and/or financed under this Title, are subject to default proceedings and they are within the territorial jurisdiction of a Tribal Government, such Tribal Government should be afforded the right of first refusal to refinance the house. Other than this reservation, we feel this Title has merit.

TITLE IV—MISCELLANEOUS PROVISIONS

The Oglala Sioux Tribe voiced its concerns, during hearings held for the companion bill in the House of Representatives, that the personnel complement authorized to administer this Act could become unweilding large and attach large portions of appropriations for its operations. We feel the reporting requirements specified in Sec. 401(c) will act to balance any unnecessary personnel costs.

The provision to establish a training program for participant families of Titles I and II is necessary if the program is to be successful and we support this section.

Under Sec. 403, we question the delegation of authority for the planning of roads to the Indian Health Service as this activity has traditionally been the responsibility of the Bureau of Indian Affairs, and the Bureau possesses the personnel as well as access to land information for such activity.

The requiring of the Bureau of Indian Affairs to maintain roads in multi-unit housing areas as a part of their on-going responsibility will provide such areas with necessary services. The BIA has presently taken the position that it is not responsible for roads built as part of the tri-agency cooperative project with the Department of Housing and Urban Development and Indian Health Service, resulting in such roads falling into disrepair, and being dangerous in many cases. Accordingly, the Oglala Sioux Tribe feels Sec. 404 is a necessary part of the Act and endorses it.

The Oglala Tribe recommends the inclusion of the words "with due consultation of tribes" between the words "The Secretary shall conduct" and "a biennial housing inventory . . ." in Sec. 405. Such an inclusion will insure that the tribes are in agreement with the findings of the Secretary's report. It has been our experience, in past reports regarding housing, that the Secretary has counted as standard housing, the units built and available only for employees of the Bureau of Indian Affairs and Indian Health Service as well as the private homes of

non-Indians residing on fee/deeded lands within our reservation, and our objections were without result.

The Oglala Sioux Tribe strongly opposes Sec. 406 and feels that the Secretary would be overstepping his authority to determine any uses of tribal and individual trust funds. First, the inference of this section smacks of the paternalistic attitudes of the Federal Government to which we have long objected; second, such authority infringes upon the prerogatives of tribal governments to determine their internal affairs; third, the special relationship which Indians and Indian Tribes have historically enjoyed with the Congress of the United States requires that full faith and credit be given to local control and self-determination initiatives. While we do not oppose a section requiring each tribe to develop and submit such a plan, we cannot support the section in its present wording.

We support the use of qualified Indians to assist in the development of rules and regulations, as set forth in Sec. 407. We have seen, too often, the good intent and spirit of Congressional actions frustrated in the rule making process. While there is a necessary separation of powers, with a system of checks and balances, it is incumbent upon the Congress of the United States to insure the integrity of its enactments. We feel this section will allow greater input from individuals who are not a part of the Secretary's regular staff.

Finally, the Oglala Sioux Tribe recommends the development of a section which will allow the Indian Housing Agency to establish and utilize a local wage scale with requisite employee protections. The requirements of the Davis-Bacon Act are excessive and prohibitive for many isolated reservations, such as ours, and the same principles can be met with locally established systems and procedures.

The Oglala Sioux Tribe wishes to, again, express its appreciation to the Senate Select Committee on Indian Affairs for this opportunity to present testimony on S. 2847 and thanks the Senate for taking this important step toward meeting the need for safe, decent and sanitary housing for Indian families. Thank you.

Mr. WOODCOCK. The committee will now stand in recess. It will reconvene in a different room, room 5302 of the Dirksen Senate Office Building, at 1:00.

AFTERNOON SESSION

Senator SCHMITT [presiding]. The hearing will come to order. We will continue this morning's discussion on S. 2847, problems related to Indian housing and opportunities related to Indian housing. Our last panel in this hearing will consist of Ron Froman, treasurer, National American Indian Housing Council; Conley Ricker, chief executive officer, American Indian National Bank; Don Berger, vice president, Cimmaron Contractors of Muskogee. We also have with us some others.

If all of you would come forward and take your positions, we will treat you as a panel and get on with the testimony. Please come forward.

Will you proceed first, Mr. Froman? We hope the other witnesses will arrive shortly.

## STATEMENT OF RON FROMAN, TREASURER, NATIONAL AMERICAN INDIAN HOUSING COUNCIL, RENO, NEV.

Mr. FROMAN. Thank you, Mr. Chairman. We are pleased to testify on Senate bill 2847, the Indian Housing Act of 1982. I would like to paraphrase some of the remarks so that we might have an opportunity for some questions and answers. I would like to submit my testimony for the record.

Senator SCHMITT. Without objection, a copy of your prepared statement will be inserted in the record.

Mr. FROMAN. Title I of the act of course, as has been testified to previously, is basically the BIA's home improvement program that is authorized under the Snyder Act. I would like to make two points on it. One is that the authorizing legislation now does close some loopholes and also makes some improvements in the existing program. First of all, it requires insurance on these programs. My knowledge of it is that any improvement made on a home improvement grant has never been insured in the history of the program. It also is not insured under the rehab. It is not done under the CDBG program, by the way.

This would require it to be done. I sit on the local level in the tribe, and I have seen these improvements done which were greatly needed. Then within a month or two, either through fire, windstorm, hazard, or what have you, we have the same family with nothing again. We have spent money, and the family's needs are as great as they ever were. By definition, these are low income individuals. They have no resources to improve themselves. They are back again asking for the same thing. I think this is nothing more than a protection of the Federal investment. I think it is necessary.

The second thing is that it keeps profiteering from occurring. This has not happened too often, but I think it is this kind of thing that can damage the integrity of any program. There are individuals strictly taking advantage of a program to do nothing but profiteer from it and at the same time deprive some other needy family of shelter who desperately needs it.

Under section 205, this probably is the main section that has caused so much difficulty for some of the tribes. I know that you probably have heard some testimony. We helped assist in putting this section into the language to be quite frank with you. I really do not find it any different than any place else. I think that this is probably the only means that the tribe as well as the Federal Government, has of insuring the integrity of the program; that being that when a person makes a deal you have the means to enforce that deal that has been made.

From our standpoint—and I speak not only as an individual, but I also speak very directly for the Creek Nation, which is the tribe I am from in Oklahoma—we fully accept this responsibility.

Now, we get down to title III of the bill. In my judgment, title III is absolutely necessary. I know that earlier this morning we had some testimony given that there was a specific section, section 30 of S. 2607, before the Banking and Finance Committee, that was to take care, in part, of the problem. This was done without limitations to the marketability of title and statutory restrictions and so forth. The Banking, Housing, and Urban Affairs Committee is to be commended because I think that they did this out of concern, trying to bring private capital in on trust lands and restricted areas. However, the FHA, VA insured mortgages still will not do it in spite of the language that was done. I will be glad to go into that later. I am inviting myself for a question, and I certainly hope I get it.

The last thing is that I have been down there for 10 years serving in the capacity as an executive director for housing authority. We have been very limited within the programs that have been available to us. It has been strictly the HUD public housing program. Never did we have the opportunity to have any diversification at all. So what we did was this. We would have a family come in who would require

nothing more than a $10,000 or $15,000 job to correct their needs. However, we would not have the funds to do it and did not have anything to correct anything. So the thing we did was erase that $10,000 or $15,000 problem and build a $50,000 in its place. It is not right, but that is the only thing that we could do, and it is the only manner that we had.

I think that the serious problem from the standpoint of Indians' economic development are all tied hand in hand. That is, that you simply cannot have a low income housing program for Indian people and expect all the good things on economic development to occur. If you go and talk with any rural planner—and I know that you are a part of the rural opportunities because if you do not have them, all of your other activities and economic development have very little chance of ever succeeding. It has been one of the problems in Indian country no matter where you go.

Senator SCHMITT. That is a problem in rural housing in general.

Mr. FROMAN. Yes; but it is a dual problem, for instance, in education. We have the BIA schools scattered all over the reservation. The BIA has to go in and build a house there. Absent the house, you do not have the teacher. You cannot have the teacher without the house. They are both tied hand in hand. The only way they have ever been able to do it, since they have not been able to go in with any other things—and we are talking about individuals who have the incomes to do this. Yet, the Bureau of Indian Affairs or Indian Health Service for their hospitals or what have you, have to go in there and build that unit in order to provide those special skills of those special people to be there.

The last thing I want to say is something that really struck hard to me, and I know that probably you would feel the same way, Senator. Last July I was in Oklahoma City, and we had a dinner honoring three former Congressmen from Oklahoma. One of them was Carl Albert, of course, who was the distinguished former Speaker of the House. All of the Congressmen had served in the House from 25 to 30 years. There was reminiscing over the various requests that they had received as Congressmen from their constituents. Some of them went from the sublime to the ridiculous.

However, I think probably the thing that the most remarkable occurrance was the request that never occurred. Each one of them told us that not once during their terms in the Congress had an Indian family ever requested a draft deferment for one of their sons.

I served my time as did many others. I do not request any great glory on it. However, I certainly do not think it is our duty as Indians to just simply be quiet and live in squalor.

I will be glad to answer any questions that you might have, Senator.

Senator SCHMITT. Thank you, sir.

[The prepared statement follows:]

PREPARED STATEMENT OF THE NATIONAL AMERICAN INDIAN HOUSING COUNCIL, SUBMITTED BY RONALD FROMAN, TREASURER

Mr. Chairman, members of the Committee, we are pleased to testify on Senate Bill 2847, Indian Housing Act of 1982.

The National American Indian Housing Council is an organization of Tribal Housing Authorities dedicated to the betterment of housing conditions for American Indians. Heretofore, our efforts have been concentrated on the HUD low income Indian housing program for the simple reason it was and is the only

housing program of any size private or otherwise, available to American Indians residing in Indian areas.

For the last year and a half we have witnessed a critical examination of the HUD Indian Housing Program by the administration with the professed goal of making the program more cost effective, more simple, and improving the program's integrity. An interagency task force, headed by Ken Smith, Assistant Secretary for Indian Affairs, was formed in October of 1981 to accomplish this task. The task force submitted its findings and recommendations in April, 1982 to the Office of Management and Budget. Those recommendations were in tune and in fact complimented the Indian Housing Act of 1982 which was being considered during this time by the House Interior Committee under H.R. 5988. We know of no other recommendations that have merit. The reason is simple. Reasonable cost effective methods for building housing in Indian areas are very limited by virtue of the trust land and relatively low incomes.

As we testified earlier before the House Interior Committee, clearly this bill is a far less complicated approach to Indian housing. This Act consolidates the program into two sister agencies requiring the same authorizing and appropriations committees in both the House and the Senate. No longer will we have to deal with the much criticized "Tri-Agency Agreement", or the myriad of Congressional committees. Also, the Congress will not be put into an embarrassing posture of one Agency requesting funds, the other Agency requesting no funds, with the Indians and bureaucrats trying to make sense of it all. The present HUD Indian Housing Program requires 16 separate Committees and Sub-committees in the House and Senate instead of eight as would be necessary under this Act.

Title I of the Act provides a new legislative base to BIA's Home Improvement Program authorized under the Snyder Act. Funds authorized under this Title do not represent "new monies" since this program is already in existence. However, the Act corrects some shortcomings and closes some glaring loopholes in the existing HIP program.

Section 102B requires insurance on housing constructed, acquired, or improved. All too often have we seen repairs done under the HIP program lost due to fire or other hazards resulting in the Indian family being without adequate shelter and by definition without resources to replace the damaged unit. In those cases where tribal resources are inadequate to provide for the cost of insurance, the tribe may require a minimum payment to cover such cost.

Section 104 prevents profiteering on the sale of an improved unit which has occasionally occurred in the past.

The revolving loan fund established by Title II of the Act will result in diminishing financial involvement of the Federal Government and is in tune and makes more sense in these times of diminished Federal resources. It also answers one of our major concerns of a long term commitment of the Trustee. Why shouldn't we make the payments made by the Indians work for the program as well as the taxpayers?

Section 205 of the Act may cause many tribes to have reservations about risking their tribal trust funds in event of non-payment. Only the tribal government itself has the authority to carry out its responsibilities, and where they do not, then only that tribe alone should suffer the consequences and be held accountable to its tribal members. As a result and, of greater importance to us, no longer will one tribe operating its program effectively suffer the consequence of another tribe's transgressions. Without question, the impact of this section will greatly enhance the program's integrity.

Title III provides loan guarantees for those Indians whose income is such that they could support a mortgage were it not for the limitations impose by the trust land status. To date, this Title is the only means advanced so far to deal with this small but growing segment of the Indian population whose housing needs are just as great as anyone elses.

Recently, the Senate Committee on Banking, Housing, and Urban Affairs incorporated in Section 320 of S. 2607 the authority for the HUD Secretary to insure mortgages for Indians residing on reservations without regard to the limitations in the National Housing Act regarding marketability of Title or any other statutory restrictions which the Secretary determines could impede the availability of mortgage insurance on Indian lands.

The Committee on Banking, Housing and Urban Affairs is to be complimented for their concern, however, FHA or VA insured mortgages still will *not* be available in spite of the language above. If the Chairman would like, I would be glad to elaborate after conclusion of my testimony.

Ultimately, the long term economic development impact of the bill may be its most meaningful feature. Low-income housing alone, by definition, limits its impact upon economic development activities. Housing opportunity for a broad range of incomes and economic development are dependent one upon the other. Absent one or the other, neither can go forward with any assurance of success. Today, economic development and the resulting jobs are woefully lacking in Indian areas. This bill, if passed, will finally put in place the basic ingredient so vital to this activity and heretofore absent.

The inclusion of rehabilitation as an eligible item under all titles of this bill will lower the unit costs and enable the tribes to house more people than thought possible with the same amount of money under the HUD Indian Housing Program. No longer will a $10,000 to $20,000 problem result in us razing a house and building a $50,000 house in its place. All the forces, such as maximum payment, lower payments on rehabilitated houses, and simplicity of program design, work towards a more judicious use of Federal funds.

This act does not give the Indians an open checkbook. Section 405 requires the Department of the Interior to report to the Congress bi-annually a housing inventory. This has never been required. The inventory will greatly assist the Congress in determining need and the subsequent appropriations necessary to meet that need. Section 405 will also assure, as far as is possible, a fair allocation of housing resources to the tribes.

In July of this year, I attended a dinner honoring three distinguished former Congressmen from Oklahoma—Carl A. Albert, Ed Edmondson, and Tom Steed. They reminisced over the many varied requests they had received from their constituents during their years in the Congress. The most remarkable occurrence was the request that never occurred. Each one testified that not once had an Indian family requested a draft deferment for one of their sons. They marveled at this sense of duty.

Mr. Chairman, we also believe in this sense of duty, but we do not believe it is our duty to live quietly in squalor. Surely, we as beneficiaries of the trust relationship with this great country deserve better.

Senator SCHMITT. We will have some questions, but first I would like for Governor Garcia to proceed with his testimony.

## TESTIMONY OF MERLE GARCIA, GOVERNOR, ACOMA PUEBLO

Mr. GARCIA. Thank you, Mr. Chairman. It is an honor and a privilege to present testimony on Senate bill 2847. I had no idea that hearings were going to be held today and I just found out yesterday that there were ever going to be hearings.

However, I did submit letters to the congressional delegation from my State of New Mexico with respect to housing. That is why I am saying that it is an honor and a privilege that I be given this opportunity to present to the committee the letters submitted to the congressional delegation.

Housing needs for the Pueblo in New Mexico are substantial. The delivery of new housing to Indian tribes is an extremely complex and difficult task. Cultural, religious, political factors often appear to conflict with existing housing assistance approaches. In addition the remoteness of Indian communities and their unique topographic and cultural condition add to their complexity. The unique status of Indian community land and trust relationships between recognized tribes and the Federal Government find it necessary to protect the Indian community and has tended to further restrict the funding availability for decent housing in Indian communities.

The recent influx of nonreservation Indians back to the reservation and extensive population growth from within have increased the housing needs in Indian communities. Although the Government, through HUD, has over the past 18 years produced over 1,300 units,

additional units are still needed to satisfy our housing needs today. Half of all housing in our Pueblos is substandard. We as Pueblos are at the mercy of the Federal Government, which is our sole source of housing assistance.

The housing delivery system in any Indian community does not involve the intermingling of lending institutions, builders, developers, nonprofit sponsors, enforcers, or real estate agents. It is our Indian housing authority which uses Federal development funds to provide 90 percent to 100 percent of the dwelling units for low income, needy families residing on our reservations.

It is unethical to completely eliminate Indian housing as it is presently administered by the Department of Housing and Urban Development. It is the firm belief of the Pueblos that as long as the need for housing in Indian communities exists the U.S. Government, as the sole source of housing to Indian communities, has a major responsibility to improve, not wipe out, its housing assistance efforts to the Indian people of New Mexico and all Indian communities.

Mr. Chairman, if you have any questions, I would like to respond to them. However, I think, in regard to the problem with the housing in Indian communities, we are beginning to do something about it. I know that the deficit, that the housing people are in, is hard to accept. However, the Pueblo housing authorities in the State of New Mexico are in the process of doing something so that they would be able to continue funding through HUD.

Senator SCHMITT. Thank you, Governor. I appreciate that very much. We had expected to receive testimony from the All Indian Pueblo Council. For some reason the witnesses were not able to be with us this morning. Your testimony is very valuable in making sure that our record is complete.

As I recall the Pueblos have some number of projects already completed under HUD housing. Is that correct?

Mr. GARCIA. Yes.

Senator SCHMITT. What has been your general experience with the HUD programs other than the cost, which I believe you and I have talked about before?

Mr. GARCIA. That is about the main problem. Other than that, some of the units that have come in have not really been the type of housing that that part of the country really should have. We have had problems in the buildings going to pieces in so short a period of time.

Senator SCHMITT. What seems to be the reason for that? Is it the wrong building for the climate, or the high wear and tear on the building?

Mr. GARCIA. I think the evaluation of the land that it sits on has not been done properly. The alkaline is beginning to eat into the foundations.

Senator SCHMITT. It is mainly foundation problems?

Mr. GARCIA. That is right. They tend to sag at one end.

Senator SCHMITT. If it makes you feel any better, that is a typical complaint even in the non-Indian rural communities where HUD housing has been involved. I know in Las Vegas we just recently got some money for the rehabilitation of units that were built on a flood plain. The same problems happen on Indian trust lands. It was improper ground for this kind of construction.

The legislation before us is designed, as I understand it, to serve as a substitute for Indian housing programs that are administered by HUD. We have heard testimony this morning from Mr. Abrams that would indicate that HUD is intending to continue its role as a major provider of Indian housing although the details implementing that decision have not been forwarded to the Congress through the Office of Management and Budget.

At this time there are over 11,000 units of public housing still in the pipeline for purposes of the Indian tribes. Both this program and the Indian community development block grant have been funded in the Senate appropriations bill for fiscal year 1983 which is pending. Given the continuation of these programs, assuming that they are going to continue in their present form with the regulatory improvements that have been discussed this morning, is there still a need for a new housing program administered by the BIA rather than by HUD? What is your feeling, Governor? You have had experience with both the BIA and HUD. Where would you put your money?

Mr. GARCIA. Mr. Chairman, it is awfully difficult to answer that question.

Senator SCHMITT. I am asking you to choose between them.

Mr. GARCIA. Preferably, I think I would go with HUD.

Senator SCHMITT. I saw a mental coin flip there. It is a sad commentary when we really cannot make up our minds which bureaucracy would least be likely to work with.

Mr. GARCIA. Mr. Chairman, when you look at the bureaucracy from the standpoint of a tribal leader, all of them work about the same.

Senator SCHMITT. When you look at them from the perspective of a U.S. Senator trying to serve that tribe and other constituents, I would have to agree with you. They have the same kinds of problems.

Nevertheless, I think Congress is beginning to move, and certainly the Senate Banking Committee is beginning to move to force major changes in rural housing programs as they affect all rural citizens, including the Indian tribes.

The Indian housing authorities in New Mexico, have indicated on many occasions that they would support elimination of the Davis-Bacon wage requirements from Indian housing programs. Do you continue to feel that way yourself, Governor?

Mr. GARCIA. Yes, Mr. Chairman.

Senator SCHMITT. The estimates that I receive from Indian housing authorities were as much as 30-percent increase in costs as a consequence of that over what could be done without that prevailing wage requirement. Do you still think that it is about that number?

Mr. GARCIA. Yes; I still think so, Mr. Chairman.

Senator SCHMITT. Based on your experience, what are the major programmatic changes that you would like to see in the HUD housing programs? Better site evaluation?

Mr. GARCIA. That would be the main thing, and also better materials involved in developing some type of housing. A lot of these frame houses are beginning to go to pieces. I would like to see local materials such as adobe, developed in the housing units to withstand some of the dry climates that we have in the State of New Mexico.

Senator SCHMITT. It has been suggested that manufactured homes or houses might be cheaper and possibly more resistant to the elements. Do you have any experience with that?

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Mr. GARCIA. I have no experience, Mr. Chairman, in manufactured homes. However, I feel I would have to object to something of that type. Preferably I would like to see low-income housing units come into existence built with adobe. Those tend to keep heat in during the winter months, and in the summer months it stays cool. They are very well insulated.

Senator SCHMITT. In the last few years we have made some progress in getting adobe accepted as a building material in other HUD programs. I really do not know the status of adobe for Indian housing programs. We should find out. However, you are right that its characteristics are excellent. The main problem of course that we have had in other Pueblos is roof construction and we must continue our attempt to work that out. We always tend to have a problem with flat roof construction. I think adobe construction adapted to a peaked roof probably is clearly one way that we should go.

Mr. GARCIA. One of the things, Mr. Chairman, that most of the Pueblos would like to see is housing blending in with the tradition of the Pueblos.

Senator SCHMITT. Please do not leave, Governor, as I may have another question for you.

Mr. Froman, do you wish to expand on your statement that that language provided by the Banking Committee will not make FHA and VA programs work on reservations?

Mr. FROMAN. Yes, sir, I will be glad to.

Senator SCHMITT. Why do you think it will not work?

Mr. FROMAN. First of all, there are two problems with it. The first thing is that the FHA mortgage itself is a long-term take out. It is a take out. It is long-term financing. There is no provision for interim financing at all on trust land. So the builder goes out there on an interim basis. He has no guarantee for anything.

Under the HUD program, what he is guaranteed is a contract with the Federal Government. He has no contract here. There is no contract whatsoever in that business. He contracts with me as an Indian to build my house on my trust land, and if I can find someone foolish enough to give me a commitment on an FHA insured loan, then I have to get the local bank to borrow my money to build my house and then get the take out which takes them all out. I cannot get that. That is one of the reasons why it will not work.

The second thing is this. For example, say I have a brother who wants to lend me some money. He is not worried about getting his money back from me because he likes me, and he is bigger than I am and tougher than I am and so forth. Even if we do that, the FHA says that they will give me 100-percent insurance, the only time that the FHA insurance will ever kick in is if you get a default judgment. A default judgment has to be done in tribal court or CFR court. I doubt very seriously if any mortgage banker is going to take the risk of getting that judgment within the tribal court system. Most of that went away when Penn Square folded. Therefore, I really do not see how it could ever come about and ever happen.

Even if they do there is no provision for them from the standpoint of a foreclosure where you have to get a sheriff's sale, you have to get an appraisal on it and put it up for public bid and so forth. Then whatever the proceeds of it are, the FHA kicks in and makes the lender

whole if there is any deficiency in the proceeds. How in the world are you going to sell that trust land?

I heard Mr. Abrams say this morning that it does not make any difference, that we do not need a judgment. Before you ever get there you have to get a constitutional amendment because, as I understand it, Indians have right of due process just like anybody else in this country. I cannot see where Mr. Abrams as the Deputy Assistant Secretary at HUD has the authority to waive that, or anybody else for that matter.

So you have to get the judgment regardless. That is where the whole thing breaks down, and so forth. I am not trying to be facetious about this in any way at all. I think the committee is to be commended, and I think it shows their concern. However, it simply did not do enough to get there.

Senator SCHMITT. Thank you. We will look at that. There seems to be some significant disagreement on whether or not the legal basis for the bridge does exist. We will try to establish that and get back with you and see if we can convince you that it does.

One of our other witnesses has just arrived. Mr. Conley Ricker, would you come forward, please, and present the committee with your testimony. We are going to have to end this at 2. If you will present your testimony, we will see if there is time for questions. You may summarize if you wish. Mr. Ricker is chief executive officer of the American Indian National Bank.

**STATEMENT OF R. CONLEY RICKER, CHIEF EXECUTIVE OFFICER, AMERICAN INDIAN NATIONAL BANK, WASHINGTON, D.C., ACCOMPANIED BY ALAN PARKER, ATTORNEY AT LAW AND MEMBER OF THE BOARD OF DIRECTORS, AMERICAN INDIAN NATIONAL BANK**

Mr. PARKER. Mr. Chairman, my name is Alan Parker. I am on the board of directors of the American Indian National Bank. I am accompanying Mr. Ricker who is getting himself ready to come to the witness table. If you will bear with us for a half a minute, Mr. Ricker will be leading off our statement, and I will be joining him on some observations we have to make.

Senator SCHMITT. If you could summarize, we would appreciate it because we are going to run out of time at 2. Mr. Ricker?

Mr. RICKER. Good afternoon, Mr. Chairman. My name is Conley Ricker, chief executive officer of American Indian National Bank. It is with great pleasure that we have been asked to testify and that we appear here before you with regard to the very important issue of Indian housing.

First I would like to introduce my associate, Alan Parker, who has already had an opportunity to speak. He is going to outline to you the background of why we were asked to testify and what we hope to accomplish here this afternoon.

Mr. PARKER. Mr. Chairman, my understanding from your committee staff is that they were looking for input from representatives of the banking industry. One of the main propositions made in this legislation is that there are serious obstacles on the part of individuals trying to access private financing for home construction and home purchases taking place on reservations and/or situated on trust property.

The American Indian National Bank is the only national bank that is owned entirely by Indians. Our basic mission is to serve the banking needs of Indian tribes and Indian people. Although we are situated in Washington, D.C., and a considerable distance from our primary market of the Indian tribes, we have over the past 5 to 10 years achieved, I believe, a considerable degree of experience and expertise in terms of trying to tailor financial services to this very unique population.

In that same capacity we have had some experience in trying to provide private financing for Indian home purchases and construction on the reservation.

As our prepared statement makes clear, the primary obstacle that we have identified is that which would be identified by any commercial lending institution confronted with an application for a loan having to do with housing on a reservation. That is, the trust status of the property itself. From the bank's point of view or from the point of view of a private lending institution, the trust status of the land prohibits, or does not make possible, securing your financial interest via a conventional type of mortgage.

The alternative is to secure a leasehold interest on the property. The borrower, in effect, assigns or obligates his occupancy right which takes the form of a lease, as part of the security for the loan. The facts are that a leasehold interest simply is not as marketable. It is not as negotiable as a mortgage would be in terms of secondary markets for mortgages, in terms of adequate collateral and security for the type of financing involved.

This is not to say that it is not possible to accept leasehold interest or the assignment of a leasehold interest as collateral for privately financed home construction or home purchases. However, the point simply is this. From the point of view of a lending institution, it is not as desirable as a mortgage. That is definitely an obstacle in terms of providing this type of financing.

In addition there has been a perception shared on the part of the business community that because the particular business transaction would be under the jurisdiction of the tribal government an additional degree of uncertainty is added to the ability to enforce your creditor rights on the reservation. Whether that perception is justified or not is really beside the point. The point is that from the point of view of the business community this degree of uncertainty adds to the reluctance that private lenders have in terms of entering into these types of transactions for reservation-based private housing.

There have been some feelings expressed on the part of many people, including Members of Congress, that the presence of a Federal loan guarantee would largely address many of the problems that private lenders encounter in this area. We have a few comments to make on that point. Primarily, it has been our experience that the Federal guarantee, which of course significantly decreases the degree of financial risk that a lender is taking on when entering into such transaction, does not adequately address the main obstacles toward the availability of private financing for home construction and purchase.

In our statement we identify a number of more specific considerations. However, I think the main thing we would say at this point is that the different types of criteria that the two existing Federal agen-

cies that offer home guarantees, VA and FHA, pose obstacles in and of themselves. For example, FHA and VA have a requirement that an applicant be able to demonstrate that the house that is to be constructed or purchased has available paved roadways; has complete sewer facilities; is in an area that is adequately zoned for residential housing, et cetera.

These may be reasonable criteria or reasonable requirements in the nonreservation context. However, in the largely undeveloped reservation situation, the imposition of these requirements constitutes significant obstacles toward having these loan guarantee programs being of any value on the reservation.

Senator SCHMITT. Let me ask Governor Garcia to comment on this. Have you had any problem with these criteria? Obviously it is an extra cost, but you have been able to proceed with the construction of this housing, meeting those criteria for sewer, water, and roads.

Mr. GARCIA. I did not quite hear that question, Senator.

Senator SCHMITT. In the housing projects and housing activities that you have had in the Pueblo, you have met these criteria for water, sewer, and roads, have you not?

Mr. GARCIA. Yes.

Senator SCHMITT. That has raised the cost of the project, I am sure.

Mr. GARCIA. That is right.

Senator SCHMITT. I presume, Mr. Parker, that you are speaking of an isolated single family home that is not a part of a project. Is that correct?

Mr. PARKER. I am speaking as a general observation. I am making a general observation that these types of criteria pose significant obstacles in terms of using these types of Federal guarantee programs. Obviously, if you have a developed housing tract in effect, you are largely addressing these physical obstacles. Whether you are also making possible the entry of a private lender into this transaction is a separate question.

Senator SCHMITT. That aside, you raise these other constraints, and we agree that they are constraints. They are constraints whether or not you are on a reservation. This has become obvious in our evaluation of both Farmers Home or HUD programs. This is the reason the Banking Committee has reported out rural housing legislation that would allow grant funds to be used to provide those facilities as well as to provide for housing.

In addition, HUD testified this morning that they had an agreement with the IHS that permits HUD funds to be used under the auspices of the IHS in order to provide sewer and water facilities for housing. I do not think that necessarily is the ideal situation, but at least it shows some recognition of this problem. We certainly felt that improvements were long overdue.

Mr. PARKER. Excuse me, Mr. Chairman. That is speaking of public housing. In terms of private housing, there is practically no private housing on reservations, as I am sure you are aware. You have a different problem. Will an individual be able to go into an area that has been developed under public money and construct housing that is private housing under private financing, whether there is a Federal guarantee there or not? I have a serious question as to whether that is the case.

Senator SCHMITT. You do not think you can substitute the obligation of a tribe for title to the land or the house.

Mr. PARKER. No; I would distinguish that question. The alternative ways of securing the financing is a separate question than the one I was speaking to, which is whether an individual could go into an area that has been developed for public housing and build, in effect, a private house and have access to those same facilities; namely, the sewer, et cetera. I just raise that as a question. I suspect not. I suspect that you cannot go into a public housing tract and construct, with private financing, basically a private home and then still take advantage of those facilities which were intended for the public housing population.

Senator SCHMITT. It seems to me that the more latitude you give an Indian housing authority or any local housing authority to work out local problems the greater chance you have of that occurring. Again, that is the reason why we like the block-grant approach to housing programs rather than categorical programs.

Mr. PARKER. Absolutely, Mr. Chairman. That degree of flexibility is critical.

Senator SCHMITT. What has been your experience, gentlemen, with the Indian housing authorities with which you deal? Do you deal with them in your banking enterprises?

Mr. RICKER. Yes, Mr. Chairman. Our experience has been excellent in that we have paid visits to most of the major reservations and have seen an enormous number of competent, capable housing under construction and in existence. We have called on, and worked with, the housing authority executives of the tribes around the country and have found them by and large to be prudent money managers looking to invest the funds available prior to construction. I mentioned tribes like the Navajos and others that have done an excellent job in our opinion.

Senator SCHMITT. Would you recommend to the committee conducting this hearing that we put the BIA in the business of administering a loan guarantee program?

Mr. RICKER. In the absence of a housing program that in my opinion was successful, yes, definitely.

Senator SCHMITT. Let us assume that there is going to be a housing program. The issue is to determine who should administer a loan guarantee program.

Mr. RICKER. My own personal opinion on that is, if one bureaucracy works and has produced housing, to replace that with another bureaucracy is going to take a tremendous amount of leadtime in order for that second group to become effective. It could be 3 or 4 years, or more. However, there is in place already an Indian housing team from HUD that has been successful in constructing Indian housing.

Senator SCHMITT. It is better the devil that you know. Is that correct?

Mr. RICKER. Better the devil you know. That is exactly right. I say that because I have seen these houses that have been constructed on many, many reservations. Also I have been through, with the bank, in the past 4 years, the efforts of trying to put money into housing on Indian reservations. We have made proposals to numerous tribes having to do with allocating funds for VA, FHA loans, for doing a leasehold assignment. We have provided the tribes with options if there was a default to pick up a lease instead of having the lease sold

in the market and perhaps go to non-Indians. All of these have not been working. We really have not been able to put any private money, as much as we would have liked to, into any Indian housing. We do have the funds, and we are an approved VA and FHA lender, and we do have the commitment from the part of our shareholders and the purpose of our existence is to go ahead and do that.

We have been trying, but have not been able to put private capital into Indian housing in any way in 4 years. Therefore, some kind of assistance in the form of the HUD program being funded and perhaps phased down but replaced with some other program, or in the absence of that, the guarantee program to enable the tribes and the tribal members to attract the private capital which is surrounding the reservation, to remove the risk to the lender so that money can be channeled into Indian housing.

Senator SCHMITT. What suggestions do you have? If nothing you have tried so far has worked to remove that risk, what do you suggest?

Mr. RICKER. My own view is that to zero out Indian housing from HUD——

Senator SCHMITT. Assuming it is not to be zeroed out, you say that nothing you have tried has worked to eliminate the excessive risks that private capital feels it has in investing in Indian housing. What do you suggest?

Mr. RICKER. We have two recommendations that we have just discussed. Mr. Parker will comment.

Mr. PARKER. The written statement that we have submitted does identify two recommendations. One is that whether it is BIA under title III, the loan guarantee program of this legislation, or whether it is HUD or whatever Federal agency has the lead responsibility for housing on Indian reservations, it is our judgment that a concerted effort has to be made to bridge the gap between the private financing community and the eligible Indian borrower.

Senator SCHMITT. What are you suggesting to do that?

Mr. PARKER. I think that you could simplify your procedures. You could try to eliminate criteria that pose obstacles. You could initiate outreach efforts. You could try to assist in the packaging of it. You could work with tribal governments in terms of their having a very active role. I think there is a range of alternatives.

Senator SCHMITT. However, in the final analysis how do you eliminate the risks to the lender?

Mr. PARKER. For example title III of this bill proposes 100-percent Federal guarantee.

Senator SCHMITT. I understand that, but is there no other option? Mr. Abrams testified this morning that he thought that the option that was contained in the Senate banking legislation would provide a bridge between traditional FHA loans and the situation that exists on the Indian reservations. Mr. Froman does not believe that it will work. What is your feeling?

Mr. PARKER. I am sorry, Mr. Chairman. I am not really familiar with the legislative proposal.

Senator SCHMITT. In my lay language it deletes the requirements for marketability of the title, and substitutes the obligation of the tribe. The problem that Mr. Froman points out is that somehow or an-

other he thinks you are going to end up in court, and the lender will not want to take that risk with the tribal courts.

Mr. FROMAN. May I comment since you are using my name, Senator?

Senator SCHMITT. Yes.

Mr. FROMAN. You say substituting the tribe. Most of what we are talking about is individual allotted land. The tribe has no more standing on individual allotted land with the exception of the court of competent jurisdiction which is a tribal court. Therefore, you are talking about an individual allotted land. Most of the reservations are checkerboarded. Some of it is held in common, never has been allotted. There is some where the entire reservation is allotted land. Then you have Oklahoma. There is no reservation. It is allotted.

Even the allotted lands are dependent upon what act it actually was allotted under. One tribe is allotted under the Dawes Commission in which any transaction has to be court approved. The restrictions can be removed, et cetera on those particular allotees or heirship property. Then you go into those lands that were allotted under the 1886 act and you get into an entirely different matter. So each reservation is not the same. Each title is not the same. I realize Mr. Abrams wants to treat everybody the same, but it cannot be done.

Senator SCHMITT. Let me ask you this. You do not think it is possible for the Congress to make FHA loans available to an individual if they accept a tribal obligation?

Mr. FROMAN. I do not understand the question when you say the individual will accept the tribal obligation.

Senator SCHMITT. If the tribe underwrites the loan, it assumes obligation for the loan independent of what the Indians' titles or obligations are.

Mr. FROMAN. We have proposed that under title II. That is what they have done under title II of this act, of this bill, in which they are saying that their trust funds are at risk. Certainly they could do it. However, then you get into who is guaranteeing it? Is it the tribes or the FHA? The ultimate guarantor under that situation would be the tribe not the FHA.

Senator SCHMITT. You can stack these guarantees up.

Mr. FROMAN. I understand that, sir. I just wanted to make that point clear. It would be the tribe who would be the guarantor and not the FHA. The tribe can guarantee right now under trust funds provided that the Congress approves that particular tribe's trust fund package that comes before this committee. That would have to come in before this committee. Each tribe's trust funds, before they could handle those, if it is claims funds, would have come in here.

If it is not claim funds, they would still be under the jurisdiction of the BIA, not the HUD Secretary anyway. This is not making anything simpler. I thought the whole purpose in doing this review was to simplify things.

Senator SCHMITT. That is the reason we are having these hearings. We are trying to figure out how to simplify it. You are helping a great deal in pointing out the complexities.

Mr. PARKER. I agree with my colleague that there is no simple solution in the form of a blanket type of solution. Federal agencies in Indian affairs consistently have tried to find blanket types of solu-

tions. This is just another illustration that that kind of thing does not work.

I want to add though for the record that there is an overriding public policy at stake here in terms of the trust status, whether it is allotted or tribal property. It is not as if there is a purely negative aspect to the trust property or to the fact that the property is in trust status. The Federal Government's longstanding commitment in Indian affairs is represented in protecting the land base in the Indian tribes and Indian people. That is what the trust status is all about.

So the burden really should not be on the individual or on the tribe in terms of finding——

Senator SCHMITT. Wait a minute. Everybody bears a burden.

Mr. PARKER. Then let me say that the whole burden should not be placed on individuals or on tribes.

Senator SCHMITT. I agree with that. We are searching for a way to share the burden so that the individual Indian is provided with adequate housing. That is our objective. In many respects the Pueblos accept part of the burden in administering a HUD program and have made a start in the right direction. We just have to keep searching for ways to bridge this gap so that the most underhoused population in the country begins to become housed.

Mr. PARKER. Absolutely. I have no quarrel with that proposition, Mr. Chairman.

Senator SCHMITT. I was afraid that you were saying that all the burden rested on the Federal Government. I disagree with that. I do not think any burden in this country rests entirely on the Federal Government. It takes the entire population of the country to share that burden, either through the taxpayer or through their own activities.

Mr. PARKER. If it sounded like I was saying the burden should rest entirely on the Federal Government, that was not my intention. My intention was to make the point that the burden should not rest entirely on the individual or the tribe to deal with the fact that the trust property presents certain technical obstacles to the availability of the housing. It is very real, but nevertheless, that burden has to be shared, I think, equally and fairly.

If I could make one final point in terms of our testimony on this issue: In addition to having the agency with lead responsibility for Indian housing go to extra lengths to try to find flexible means of overcoming the obstacles that now exist in terms of accessing private financing for credit-worthy individuals, we have a suggestion that that lead Federal agency also explore the possibilities of working with Federal and State bank regulatory agencies, as I am sure you are well aware, having served on the banking committee.

Specifically, there is a statute called the Community Reinvestment Act, which is title VII of the Housing and Community Development Act of 1977. This generally requires banks and financial institutions to indicate how they are meeting the needs of all sectors of the market they are serving on an indiscriminate basis. I believe that may represent some leverage in terms of that lead Federal agency again working with those bank regulatory agencies, working with banks and financial institutions on or near the reservations.

If they are not providing private financing for credit-worthy individuals on Indian housing, and if there are acceptable alternatives

to the straight mortgage type of security device, then I believe that there may be some room to apply the Community Reinvestment Act requirements.

Those are our two recommendations.

Senator SCHMITT. We appreciate that. Without objection, a copy of Mr. Ricker's prepared statement will be placed in the record at this point.

[The prepared statement follows:]

PREPARED STATEMENT OF MR. R. CONLEY RICKER, CHIEF EXECUTIVE OFFICER, THE AMERICAN INDIAN NATIONAL BANK

Mr. Chairman, members of the Select Committee. On behalf of the Board of Directors and stockholders of the American Indian National Bank I would like to express my appreciation for the invitation to present testimony to this committee on the vitally important question of Indian housing. I am accompanied this afternoon by Mr. Alan Parker, Esq. a member of our Board of Directors and Mr. Darrell Merkel, Vice President for Credit and Loan Operations.

The American Indian National Bank was requested to present to this committee our perspective as a privately owned lending institution regarding the placing of loans for the purchase and/or construction of personal residences within Indian reservations and situated on Indian trust property. As this committee is aware, based on our recent appearance before the Select Committee during its April 29, 1982 oversight hearings on Indian Economic Development, the AINB is the only nationally chartered commercial bank whose ownership is limited exclusively to Indian tribes and individuals. Charted in 1973, our principal mission is to serve the banking needs of Indian tribes, committees, organizations and individuals. Although we are located 2,000 miles away from our primary market, we have developed a considerable body of experience and expertise in tailoring our banking services to the unique needs and conditions which exist in Indian Country. While we do intend to expand into the West by establishing full service banks in appropriate locations in the future, we are confident that the following observations and comments regarding private sector lending for housing purposes are adequately representative of the banking industry.

Mr. Chairman, before proceeding with our remarks regarding banking practices and private housing in Indian country, I would like to make it clear that we recognize the overwhelming need of the Indian people for public housing assistance. AINB is not a membership organization and we are not interested in taking a political position on S. 2847, however, we believe that only the federal government is in a position to mobilize the resources to meet the tremendous housing needs in Indian country. Whether the United States does this through S. 2847 with its proposal for an Indian Housing Office in the Department of Interior, or continues the HUD program, or pursues some other alternative, it is clear that the Federal Government must make every effort to continue to provide public housing assistance.

In preparing for this hearing, we have primarily focused on the issues raised by Title III of S. 2847, provisions for the establishment of an "Indian Housing Guarantee Fund". This provision of the bill recognized that, in addition to the great need for public housing, there are real problems in securing private financing for home purchase or construction on the reservation by individuals who would otherwise be able to afford such a purchase. Credit worthy Indian people have great difficulty securing a home loan from private lending institutions precisely because the home is or will be situated on the reservation. Moreover, there is a near total absence of private housing stock on the reservation resulting in the absence of a private housing or real estate market.

The first and foremost reason for many private sector lenders' reluctance to enter the housing market on Indian reservations is the ownership status of the land. Tribally owned land is held in trust for the tribes by the United States Government, which severely limits the resale prospects or marketability of a particular property in the event of foreclosure. The lender is asked to assume a lease-hold interest as collateral as opposed to a fee simple interest as would be the case in lending to borrowers where the land is not held in trust. Lending on land owned by individual Indians, held in trust, becomes somewhat less complicated in that a tribal resolution and a long term lease from the tribe are not

required. Major problems can still be encountered in this area as related through the following example of actual experience of the American Indian National Bank:

American Indian National Bank originated a real estate loan to a borrower wherein the property to be encumbered was held in trust for the individual by the United States Government. The Bank took the necessary and available safeguards to perfect a lien on the trust property. The borrower subsequently defaulted, and the property went into foreclosure. When foreclosure was complete, the land became the property of the Bank and was transferred from trust status to fee simple status. Although the property could now be purchased and sold by anyone, it remained unmarketable due to its location and its relative inaccessibility. It was surrounded by other lands in trust. The Bank was forced to liquidate its interest in this property at a loss due to the extremely shallow market of buyers for properties of this type.

Reportedly, many people, including some in Congress, have assumed that the availability of a Federal guarantee would make a significant difference in terms of the ability of Indians to secure private financing on the reservations. In our experiece, FHA/VA lending criteria do not effectively address the unique problems of placing housing loans on Indian reservations. In addition to their basic income and credit requirements, FHA/VA's standards require the presence of paved and/or gravel roads and also properties that have water and sewer services. For private or public housing on reservations, this can create a serious obstacle. The absence of zoning laws has also created problems in some cases. FHA/VA appraisals to establish value are oftentimes difficult to obtain, in that there can be no dollar value attributed to the land and in most cases there are no comparable sales to arrive at that value. This is contrary to normal real estate lending practices in that in most cases value, especially on existing housing, is arrived at on the basis of comparable sales.

Lenders are also hesitant to enter the Indian housing market on reservations due to a higher cost of servicing this type of loan. Property may be located in a remote area, and jurisdiction of the property may be subject to control of tribal courts and laws. This creates great uncertainty on the part of the lender and results in perceptions that the financial risks are simply too great to be worth it.

Although the obstacles to this type of lending as mentioned above are not insurmountable, the experience of American Indian National Bank in this area leads us to conclude that the formulation of simplified procedures to be followed by private sector lenders in the placing of real estate loans on Indian reservations, on the part of any Federal loan guarantor agency, would greatly contribute to the value of such a guarantee program.

Any Federal agency with responsibility to assist in this area, would also do well to work with the Federal and State banking regulatory agencies to explore whether the Community Reinvestment Act (Title VIII of the Housing and Community Development Act of 1977) may be applicable. This law requires banks and other financial institutions to indicate how they are meeting the needs of all sectors of the market they are serving on an indiscriminate basis. Banks located on or near reservations should be required to demonstrate that they have taken every effort, which is also reasonably sound financially, to meet the need for private housing financing. If a Federal agency is providing guarantees which could serve to offset the financial disadvantages associated with lending involving Indian trust property, banks should be asked to go beyond their normal lending procedures. In summary, we at AINB are convinced that more can and should be done by the Federal Government to meet both public and private housing needs in Indian country. The loan guarantee program authorized in Title III of S. 2847 is quite promising and should be augmented by other outreach efforts on the part of whichever Federal agency is directly responsible for the Government's housing responsibilities on the reservations. Of course there is also great potential for positive involvement by the Tribal governments in this area. We shall be happy to answer any questions you may have. Thank you.

Senator SCHMITT. I am going to have to go to the Appropriations Committee now. I want to thank all of you for your testimony. I appreciate it very much. Obviously, Indian housing is not an easy subject but clearly one that must be addressed. Both committees will do their best to address the issues promptly and adequately.

We are also happy to see that we have the attention of HUD and that they are moving to correct some of the existing inequities. However, clearly the law does not allow them to move with as great flexibility as we would like to see them move.

So, thank you very much. The hearing will stand adjourned.

[Whereupon, at 2:05 p.m., the hearing was adjourned.]

# APPENDIX

## Additional Material Received for the Record

ALL INDIAN PUEBLO COUNCIL

TESTIMONY
OF
DELFIN J. LOVATO, CHAIRMAN
SEPTEMBER 22, 1982
S.2847

Mr. Chairman and members of the Senate Select Committee on Indian Affairs, my name is Delfin J. Lovato, I am Chairman of the All Indian Pueblo Council which is composed of the Pueblos of: Acoma, Cochiti, Isleta, Jemez, Laguna, Nambe, Picuris, Pojoaque, San Felipe, Sandia, San Ildefonso, Santa Ana, San Juan, Santa Clara, Santo Domingo, Taos, Tesuque, and Zia. Thank you for giving us this opportunity to present testimony on S.2847, the Indian Housing Act of 1982.

The Pueblo Tribes of New Mexico have been extremely concerned about the Administration's continuing effort to kill Indian housing within the Department of Housing and Urban Development (HUD). As a result, the Pueblo Tribes have been at the forefront along with other Indian tribes in the country, looking at alternatives should the Administration be successful in terminating Indian Housing within HUD. We strongly supported the general concept of H.R. 5988, The Indian Housing Act of 1982, introduced by Congressman Morris Udall of Arizona in the U.S. House of Representatives.

We are attaching our testimony on H.R.5988 as it reflects our views on S.2847 as well as representing the views of the New Mexico Indian Housing Authorities. I will limit my remarks here to three primary areas of concern which are contained in S.2947.

First, in order to develop an Indian Housing Program which is less costly, stimulate the economy and create jobs, the Pueblo Tribes strongly feel that the Davis Bacon requirements for Indian housing should be eliminated as it totally neglects the fact that Pueblo Indians have been building their own homes for centuries before the coming of HUD or the minimum property standards. Many of the structures built in the 1500's or 1600's are still standing today. Also, allowing Pueblo and other Indian tribes to use native materials will not only cut costs, but will stimulate local economy.

Secondly, the medium income requirements for participation in Title II programs and the maximum cost requirements per unit are concerns which should be given careful consideration. Many Indian reservations are isolated and no two Indian reservations are the same; factors such as location, labor forces, and other elements should be considered.

Lastly, serious consideration should be given to the establishment of a 5-member Advisory Committee to work with the Director of Indian Housing within the Department of Interior to insure that policy and regulations which will govern the project represents the needs and views of housing that the Indian people have long desired.

We strongly request that this Committee and the United States Senate give serious and favorable consideration to this legislation.

Thank you.

TESTIMONY
OF
DELFIN J. LOVATO, CHAIRMAN
APRIL 14, 1982
H.R. 5988

Mr. Chairman and members of the House Committee on Interior and Insular Affairs, my name is Delfin Lovato, I am Chairman of the All Indian Pueblo Council which is composed of the Pueblos of: Acoma, Cochiti, Isleta, Jemez, Laguna, Nambe, Picuris, Pojoaque, San Felipe, Sandia, San Ildefonso, Santa Ana, San Juan, Santa Clara, Santo Domingo, Taos, Tesuque, Zia, and Zuni.

I am accompanied by: Mr. Don Montoya, Director of the Laguna Pueblo Housing Authority; Mr. Salamon Garcia, Director of the All Indian Pueblo Housing Authority; and, Mr. David Perez, Director of the Northern Pueblos Housing Authority. Also, Governor Gilbert Pena of Nambe Pueblo is present. With the exception of Zuni Pueblo, these gentlemen are responsible for the planning, development, and construction of all HUD Indian housing programs in the other 18 Pueblos. Needless to say, these gentlemen also endure the frustrations and mental anguish which comes along with the federal bureaucracy. I hope that the Committee will allow these gentlemen the opportunity to comment and/or answer any questions you may have.

Please note that while many months have been spent on salvaging Indian housing within HUD, we have not had ample time to study some provisions of H.R. 5988 to our satisfaction, and to adequately consult with all Pueblo tribes. We therefore, ask that we be allowed to submit additional testimony within the next 30 days.

Mr. Chairman, I must commend you and members of the Interior Committee staff for your efforts in developing a bill which not only addresses Indian housing, but also provides an alternative approach to complex, but much needed services to the Indian people. Having worked as a housing director, I can appreciate the difficult task which is before us all.

Since the objective of this Administration is clearly committed to terminating Indian Housing Programs, irrespective of the devastating impact such action will have on the health and social well-being of Indian people, we must find an alternative to continue a federal housing assistance program for Indians.

After limited consultation with tribal governments and the Indian Housing directors in our State, the following is a summary of our concern and recommendations on H.R. 5988.

INTRODUCTION:

Section 3 - Definition:

1. Adjusted Family Income:

While we strongly support the $1,000 deduction for each member of a household, plus the $3,400 or more deduction, we strongly feel that all deductions that are presently available in HUD Regulations should also be included in H.R. 5988. HUD presently allows deductions for child care, transportation, training, etc.

2. Minimum Standards:

a. The tribal governments, through their tribal housing authority should determine what constitutes minimum standards for decent, safe, and sanitary housing on a given reservation. Adobe and other native products have produced safe housing for Pueblo Indians before a white man set foot in North America. Adobe houses in our Pueblo communities, several hundred years old, continue to provide shelter to our people. Still, Government regulations and requirements established for suburbia USA, virtually prohibits the use of native materials in HUD construction.

b. H.R. 5988 should provide for the recognition and use of related tribal codes as part of the minimum property standards.

c. Lastly, the Tribal housing agency, and not the BIA should decide the size of homes to be built based on economics and common sense rather than having the family size (only) dictate this important factor.

TITLE I - INDIAN HOUSING IMPROVEMENT PROGRAM:

This section is basically an expansion of the present BIA Home Improvement Program to include new construction. While the present Housing Improvement Program has worked well on our reservations, the most limiting factor has been funding. Unless adequate funding is provided for this Section, the addition of new construction will only vacillate the project even more.

SECTION 102: Renovation and New Construction - Insurance

SUBSECTION b:

Provides that insurance for renovation must be required unless waived by the Secretary. Insurance allocations, appraisals, and payment on repairs and renovation are extremely difficult to ascertain and we thereby recommend that insurance be required only on new construction.

SECTION 103:

Eliminate portion.

SECTION 104:

Eliminate portion.

SECTION 105: Appropriations

H.R. 5988 authorizes a funding level of $30,000,000. We strongly recommend a funding level of $100,000,000. As stated before, the present BIA-HIP program provides for repairs and renovation at a funding level of approximately $23,000,000; H.R. 5988 now proposes to expand this program to allow new construction as well as acquisition of standard housing. Additional funding is necessary.

TITLE II - INDIAN HOUSING FINANCE BOARD

SECTION 203: Submission of Application

We strongly recommend that the Act provide that the Secretary shall have a maximum of 30 days upon receipt of application to reject the application. Otherwise, approval will be automatic.

SECTION 205: Attachment of Tribal/Individual Trust Funds

We are strongly opposed to the attachment of tribal or individual trust funds, or inclusion of this section in H.R. 5088. We are not aware of any other unit of government who participates in a public housing project which is subjected to this penalty; this requirement is discriminating in that respect. Secondly, we strongly feel that adequate penalties can be set up by the Secretary as part of the project agreement. A penalty which deprives a tribe of any future housing until an acceptable level of rent collection is reached, is much more acceptable. Lastly, we strongly feel that all tribes have sufficient means by which to handle the high incidence of delinquent rents, through tribal councils and tribal courts.

SECTION 206: Initial Funding

SUBSECTION a:

This limits tribal housing agencies to a start-up cost of $50 million or 2% of total project costs. We strongly recommend that 3% start-up cost is much more realistic. This is the present rate on HUD contracts. We further recommend that the total amount of the project cost be provided to the tribal housing agency as soon as final project approval and construction begins. Payments can then be made by the housing agency directly to the contractor based on percentage of completion. Submissions to the Secretary for payment would be too untimely and costly to all concerned.

SUBSECTION c:

The Secretary should be required to assure completion of a project within one year of contract execution.

SECTION 207: Submittal of Final Plans and Specifications

We strongly recommend that the Secretary be required to approve the final plans and specifications no later than 20 days after submittal by the tribal housing agency, and as provided for in Section 10, Subsection 9.

SECTION 208: Acquisition of Property

We strongly recommend that any land purchased for the benefit of a tribal housing project will become part of the trust lands of the tribe.

SECTION 209: Rent Schedule

SUBSECTION b:

This section should provide or establish a rate of no more than 15% of a household's adjusted family income. This limitation on rent collection should be contained in the regulation, not in the Act.

SUBSECTION c:

Is an interference into the relationship between tribal governments and its membership, and should be eliminated.

SECTION 211: Payment of Rent to U.S. Government by Tribal Housing Authority

H.R. 5988 requires the agency to deposit residual payments on a quarterly basis. We strongly recommend that the agency be allowed to make deposits only once a year to allow the agency to generate income for renovation and repairs or cover other administrative costs out of investments of this fund.

SUBSECTION c:

Provides that an agency cannot fall below 90% collection rate without being penalized. We strongly recommend that the 90% requirement be changed to 50%. We further recommend that the 50% rate be flexible to accommodate for the high unemployment rate on most reservations. We further recommend that the 50% rent collection rate may be further reduced by the Secretary after analysis of the social-economic conditions on a reservation.

SECTION 212: Monitoring and Inspection

SUBSECTION b:

Requires IHS to insure adequacy of agency plans and inspections. We strongly recommend that this responsibility be limited to the Agency to prevent duplication.

/mzl

SECTION 213: Bonds

We strongly recommend the inclusion of payment bonds.

SECTION 215: Bidding Procedures

We strongly recommend that H.R. 5988 allow for negotiated contracts and that the agency have the discretion of utilizing Davis Bacon wage scales, or other prevailing scales in the area. Economic and social-economic stimulation is an important factor.

TITLE III - THE LOAN GUARANTY FUND

1. There is definitely a need for a loan guaranty program to meet the needs of the somewhat affluent Indian families on Indian reservations who otherwise cannot finance their homes because, among other problems, of the legal status of Indian lands. This Title represents a good start in meeting this need.

2. In order to encourage an influx of private money on Indian reservations for home building, the Government guaranties should be very close to 100% in every instance.

3. Consideration should be given to omitting the realty as a factor in the guaranty arrangement. Tribes look unfavorably upon strangers owning property within their reservations, as the Secretary would in case of default as contemplated by this Bill. The Secretary would likely find it unfeasible to dispose of the real estate to any economic advantage following a default. A provision could be made authorizing an agreement whereby the Tribe would place another in the realty, and the new owner's monthly payments could go toward paying off the Government. The Government, of course, could continue its recourse against the original homeowner. In short, the foreclosure system envisioned by the Bill should be avoided.

4. Consideration should be given toward a subsidy or other device to reduce the monthly payment which a homeowner would have to make under Title III. Those monthly payments for a standard 3-bedroom, 2-bathroom dwelling could approach $1,000 per month. This represents a substantial gap between the payment obligations of a Title II participant on one hand and a Title III participant on the other. Title III should recognize the undeniable fact that because of isolation and other circumstance, private Indian housing is extremely expensive on reservations.

Testimony of the Lummi Indian Tribe
Presented to the Senate Select Committee
on Indian Affairs Regarding S.2847,
Indian Housing Act of 1982

The Lummi Tribe and the Lummi Housing Authority appreciate the opportunity to present testimony before the Senate Select Committee on Indian Affairs regarding the Congressional consideration of S.2847, the Indian Housing Act of 1982.

The Lummi Tribe considers affordable and decent housing on the reservation as a vital support element in its social and economic development plans. Adequate housing enhances the Tribal social infrastructure; preserves Lummi Tribal cultural integrity; allows our children to grow up with a sense of community; and, serves as tangible symbols of progress and achievement for the Tribal labor force employed in Tribal or local enterprises. The pace of Tribal development towards self-determination and a self-sustaining economy depends heavily on the Tribe's capabilities to provide shelter to its members.

The Lummi Indian Reservation borders the Northwest coastline of Washington State comprising a 13,000 acre land base. The Lummi Tribal enrollment currently includes 2671 members with 600 more in a pending status. Since the Lummi Tribe has been denied housing assistance since 1976, the Lummi Housing Authority has 290 applications on file. These applications, demographically, include:

| | | | |
|---|---|---|---|
| Families | - | 18-30 yrs. | = 173 |
| Families | - | 30 yrs.+ | = 86 |
| Elderly | - | 50 yrs. & over | = 31 |

Private market resources are not available to support housing due to the trust status of the land base, current high interest rates, high unemployment, and inflationary escalation of potential rental units.

The current Lummi housing situation is indicative of the complex issues related to Indian housing in general. In 1977, the Lummi Tribe planned to initiate construction of a Lummi sewer project necessary for future housing and commercial enterprise requirements. As the system also included construction on non-Indian lands, a group of non-Indians filed an injunction against the Tribe to remove Tribal project administration. After two years of attempts to negotiation, the Tribe filed counter legal actions in 1979. The costly litigation lasted over two years with the Lummi Tribe winning the case in 1982. Thus, five years of development plans were halted as the Tribe had to seek legal determination of its jurisdictional authority. The result of this litigation are overcrowding of existing units and an extensive backlog of applications to the Lummi Housing Authority.

Prior to the sewer construction lawsuit, the Lummi Housing Authority successfully administered HUD-sponsored housing programs including:

1968 - 20 Mutual Self-Help units funding: $212,300

1972 - 40 Turnkey III Homeownership funding: $1,268,787

1975 - 25 Low Rent (10 elderly, 15 families) funding: $655,737

1976 - 35 Turnkey III Homeownership funding: $1,279,286

The Lummi Tribe and the Lummi Housing Authority are anxious to continue their successful housing program and S.2847 offers a viable legislative structure for future Indian housing.

The Lummi Tribe commends the Congress in its consideration of a comprehensive Indian housing program to be administered by a special office in the BIA. Previously, housing programs from HUD, FHA, and BIA/HIP created a patchwork of bureaucratic responsibilities and a complex regulatory system. With the IHS handling water and sanitation,

Indian Tribes have been placed at the mercy of multiple Congressional committee jurisdictions and often mismatched appropriations. Although the law provides that Indian Tribes will still have access to other Federal housing initiatives, placing the Indian housing under one roof with a requirement for Secretarial conduct of a biennial inventory of Indian housing needs will ensure accurate information for Congressional oversight and Indian Country analysis and recommendations.

The HUD has created a network of Indian Housing Authorities with proven technical and management capabilities to implement efficient and effective Indian housing programs. Although the pending legislation stipulates Tribal and Indian housing authority control and responsibility for program management, there is a concern that the BIA will add a bureaucracy with corresponding volumes of rules and regulations to administer the program. As a counter to the potential burgeoning bureaucracy, the Lummi Tribe suggests that the BIA take over Indian housing from HUD over a three year phase with instructive Congressional report language and follow-up oversight regarding agency justification for personnel and the promulgation of program rules and regulations. This process proved effective in the transfer of National Institute for Alcohol Abuse and Alcoholism programs to the Indian Health Service in recent years.

The Lummi Tribe also suggests that current Indian Housing Authority staff be employed at the local levels in offering training and technical assistance to BIA staff and existing IHA's during this transition phase. These knowledgeable personnel could provide valuable liaison and coordination services as the BIA assumes responsibility for the housing program.

The Senate Select Committee on Indian Affairs mandate for coordination between BIA and IHS in matching housing and water/sanitation

needs is commendable. Considering that each agency operates under different P.L. 93-638 rules and regulations, it is questionable whether the coordination is achievable unless some measurable accountability is built into the legislation. At the least, there should be some mechanism to ensure complimentary program appropriations and coordinated management.

Indian housing is currently recorded as 43 percent substandard as compared to 12 percent substandard housing in the rest of the nation. Given the prevalence of poverty and unemployment among Indian people, the provisions of Title I of the legislation to provide direct grants for poverty stricken families is most appropriate. The Lummi Tribe supports the provisions of a Tribal option to administer this program and assess management fees. The consideration of selling trust lands for family housing in default is viewed with extreme skepticism and should include a Tribal first option to purchase provision.

Under Title II, the Indian Housing Finance Fund establishes a revolving account for financing housing construction or rehabilitation for approximately 70 percent of the housing under this legislation. Tribal housing authority administrative control of this Title, including the provisions for planning, are supported by the Tribe. However, the provisions that trust lands or funds held by the individual borrower or Tribe are to be attached for borrowing purposes is viewed as a dangerous precedent. It is understandable that collateral be required; however, trust monies or lands should be a last resort and applied only after all other avenues of possible compensation or repayment, including Tribal revenue, have been exhausted.

The Indian Housing Loan Guaranty Fund authorized under Title III provides 100 percent guarantee on loans by Tribes or individuals. As there is an understandable guarantee aggregate lending limit to the

United States, provisions should be considered to ensure equitable distribution of guaranteed loans among Tribal populations with some incentives built into the program in future years for priority consideration to be given to exemplary Indian housing authorities. Those housing authorities experiencing difficulties should, in similar fashion, be given priority consideration for training and technical assistance.

Under Section 309(a)(2) of Title III, the local lending institution may seek immediate reimbursement of 95 percent of any loan in default from the Secretary without foreclosure proceedings. The Lummi Tribe feels that provisions should be added to require the lending institution to give the local Indian Housing Authority at least 30 days written notice of such plans and that the percentage return for a lending institution seeking immediate government reimbursement should be reduced to a somewhat unattractive option except in extreme circumstances. The concern is that a 95 percent return on investment including interest with no Tribal knowledge of foreclosure could create an atmosphere where guaranteed loans are made under highly questionable repayment possibilities unbeknownst to the Tribe. And loan foreclosures, negatively impacting the Tribal housing program, could be made without Tribal knowledge.

Under Title IV, Miscellaneous Provisions, the Congress has wisely separated the Office of Indian Housing budget and functions from the general BIA operations. In particular, the Tribe encourages the consideration and support for Section 402 providing training and technical assistance to Indian Housing Authorities. With Tribal personnel changes due to multiple factors and the potential financial responsibilities to be assumed by Tribal governments, the Lummi Tribe stresses heavy importance on T.&T.A. to ensure sound Indian housing management. As mentioned previously, those Indian housing authorities experiencing problems

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or potential operational difficulties should be offered priority T.&T.A. support to maintain standards for the total Indian housing program. The provisions under Section 404 for site improvements, streets, and driveways according to BIA standards is also supported by the Tribe.

In conclusion, the Lummi Tribe supports the basic provisions of S.2847 and H.R. 5988, Indian Housing Act of 1982. The Lummi Tribe views with concern the provisions of Title I and II and the study authorized in Title IV, Section 406 to review direct or indirect use of Indian trust lands/funds in Indian housing. Extreme care should be taken by Congress to ensure Tribal opportunity to substantively review and recommend provisions to safeguard Tribal and individual Indian trust assets. Otherwise, this legislation will be another camoflaged vehicle to reduce the Tribal land base and diminish Tribal resources towards ultimate Tribal extinction. The Lummi Tribe and its respective members are well aware of the constant pressure by non-Indians to acquire the valuable trust resources. And, we will vigorously oppose any covert encroachments on trust monies or properties.

MINNESOTA
HOUSING
FINANCE
AGENCY

October 25, 1982

The Honorable Harrison Schmitt
United States Senator
248 Russell Office Building
Washington, D. C. 20510

RE: Minnesota Housing Finance Agency Indian Housing Program

Dear Senator Schmitt:

In 1975, a brief study of Minnesota Indian housing needs was completed. This study showed a critical need for Indian housing programs. The 1976 Minnesota State Legislature responded by enacting a law for American Indian housing programs and appropriating $5 million.

To date, the Minnesota Legislature has appropriated $19.46 million, of which $16.46 million are for tribal housing programs and $3 million are for urban housing programs. The allocation of funds for both tribal and urban programs is made to various tribal and urban entities based upon their respective populations.

The following is a brief description of each program and current statistics on the number of loans approved:

Tribal Programs

The tribal programs are revolving loan funds administered by tribal entities created for this purpose. The loans provide below market interest rates (3%-5%) for 30 year mortgages to low and moderate income American Indian families living on and off the reservations. Home improvement loans with terms of up to 15 years are also provided.

The administering agencies of the tribal programs are: (1) the Minnesota Chippewa Tribe Housing Corporation, which has provided 392 loans; (2) the Red Lake Housing Finance Corporation, which has provided 128 loans; and (3) the Minnesota Dakota Indian Housing Authority, which has provided 41 loans.

The Minnesota State Legislature has also provided appropriated dollars for rehabilitation grants for low income American Indian families residing on or near reservations. Eligible improvements have included energy conservation measures, correction of health and safety problems, improvements to increase code compliance and other repairs which improve the home's basic livability. These funds, totalling $603,564, have provided 139 grants to eligible families.

Due to appropriation reductions at the state level, grant programs are no longer being provided. An interest free deferred loan or a loan at a very low interest rate is now available for low income families.

It is important to note that while there certainly were some growing pains, the tribal entities implementing the various tribal housing programs are competent administrators. Any program of mortgage lending, is by necessity, complicated. This Agency's experience indicates that with appropriate technical assistance, tribal organizations do a good job of mortgage lending. Any tribal housing program being designed for the future must recognize the need for technical assistance and provide adequate resources to train staff, provide outreach, and have adequate resources for portfolio management. The tribal organizations have clearly helped meet the state's goal of providing decent, affordable housing to the American Indian reservation population.

Urban Programs

The $3 million urban Indian housing appropriation is allocated on a population basis to the state's major urban areas -- Duluth, St. Paul, Minneapolis and the Twin Cities suburbs. These appropriations are required by law to be leveraged with other public and private monies to the extent possible, and to provide innovative, affordable housing opportunities to urban Indian families. The leveraging aspect of the law has caused some difficulty in program development for the urban areas.

Any new federal programs could be used in this leveraging. It is important to recognize that the urban programs can and do operate without the restrictions on lending that are a part of the reservation programs. Thus, there have been much greater opportunities for creating innovative combinations of resources for lower income Indian families.

As federal resources for housing change, it is important for the Congress to maintain as much flexibility as is possible in the remaining funds so that leveraging opportunities can be retained. Also, as federal and state resources decline, it is important to maintain flexibility and make program implementation as simple as is possible.

Leveraging or combining of scarce resources should continue to be an important part of urban programs, simply because the opportunity to leverage exists in urban areas along with the greater administrative capacity found in city agencies.

However, it appears that by January 1, 1983, all urban area programs will be optional.

1. The Minneapolis housing program is administered by the Minneapolis Community Development Agency and has been used in conjunction with U. S. Department of Housing and Urban Development (HUD) programs, specifically, Community Development Block Grants (CDBG's), and Federal Housing Administration (FHA) Section 235 homeownership loans. It has also been used in conjunction with the Minneapolis/St. Paul Family Housing Fund, which provides below market rate home mortgage loans. The Minneapolis housing program is a revolving loan fund that provides below market rate financing for 30 year mortgages and/or rehabilitation loans. The program has focused on

rehabilitation of substandard properties and construction of new in-fill housing in a neighborhood which currently has a significant concentration of Indian families. The program enables participants to rent the homes for up to three years while they build up equity and good credit histories before obtaining the mortgage loan. Sixteen families have received loans through this program.

2. The St. Paul Housing Program will be administered by the St. Paul Intertribal Housing Corporation. This housing program also utilizes the Minneapolis/St. Paul Family Housing Fund as a leveraging mechanism. The state funds are used to reduce the monthly payment on the Minneapolis/St. Paul Family Housing Fund loans by providing a second lien "equity participation loan" for up to 50% of the total financing necessary for a specific transaction. This revolving loan fund will provide 30 year mortgages to qualifying families.

3. The Minnesota Dakota Indian Housing Authority will be administering a 30 year, below market rate, mortgage loan program for the Twin Cities suburban areas. This program will be utilizing Minnesota Housing Finance Agency Single Family Mortgage Loan Program funds as a leveraging mechanism.

4. The Duluth Indian Housing Program will be administered by the Minnesota Chippewa Tribe Housing Corporation. This housing program is a revolving loan fund that will provide below market rate financing for 30 year mortgages. This program will also be utilizing the Minnesota Housing Finance Agency Single Family Mortgage Loan Program funds as a leveraging mechanism.

Providing affordable housing in an urban setting for low income Indian families will continue to be a challenge. The federal government must make certain that its resources are available in ways that permit innovative and simple leveraging with state and local resources that are available.

Responses to specific issues:

1. Impediments in dealing with housing on trust lands.

   It is impossible to establish sufficient title to the property proposed as security to satisfy local title requirements. This makes it nearly impossible to perfect valid security interests such as a mortgage lien on the property. Therefore, any loan is really being made as a personal unsecured loan to the borrower. This makes it impossible for states to use the proceeds of tax exempt bonds for reservation mortgage programs.

2. Types of problems the programs are designed to address.

   In order to minimize the land trust problem and to take advantage of the tribal entities' expertise in developing and implementing tribal land leases (in conjunction with the BIA), the Minnesota Housing Finance Agency contracts with tribal entities to administer the housing programs. To date this method has proven successful. Some other problem areas these programs are designed to address include credit underwriting standards, high interest rates and the special needs of large families. All of the tribal and urban housing programs have below market interest rates. A majority of the staff are qualified American Indians.

3. Means used to coordinate water and sewer facilities with access roads and housing.

In respect to the water and sewer facilities, in the past these efforts were coordinated and costs incurred by the Public Health Service, Sanitation Facilities Section. However, due to federal cutbacks, these costs are now being included as part of the financing for each family. This obviously makes affordable loans more difficult to achieve.

4. Effectiveness of programs in dealing with these problems.

There are many legal impediments precluding the use of state funds to develop water and sewer facilities and access roads on tribal trust lands. Minnesota Housing Finance Agency programs are specifically designed for purchase or construction of housing stock. The lack of adequate funds for water, sewer and access roads has restricted location and development of new housing.

5. Role of federal government in assisting states' efforts.

A number of states have Indian reservations or Indian populations in locations that would make it difficult for states to provide regular housing services. For these states, the housing activity has varied as has the working relationship with the Indian population. Most states do have some capacity in housing finance. In virtually all instances the major financial capacity involves the use of tax exempt revenue bonds to finance mortgages. However, it is not possible to use revenue bond proceeds on reservations because of the difficulty of obtaining clear title to the land. Without other forms of security, investors are not willing to bear the additional risks inherent in such loans.

In Minnesota, the state has provided, in addition to the authority to sell tax exempt bonds, substantial appropriations to be used on reservations. Minnesota, like all other states, is having financial difficulties and has enormous pressure on limited state resources. This is happening at the same time that the federal government's role in financing services is changing. Thus, it is not likely that the amount of state dollars for Indian housing programs will continue at past levels. Therefore, federal resources are important both as a stimulus to state action and as a source of adequate funding.

Federal resources should be used both as an incentive as well as a source of leveraging and, if possible, as a security for state efforts. It is likely that revenue bond resources will be the primary state financial tool for the future (if the Mortgage Subsidy Bond Tax Act is extended beyond its December 1983 sunset). The federal government might be able to develop an insurance program for a limited number of bonds to be issued in certain states and thus, make it possible for states to provide revenue bond financing on Indian reservations. While this would be complex, it would permit a small number of federal dollars to leverage a substantial amount of state effort while providing the appropriate security to the state effort. A task force of states with significant Indian populations and with state housing finance agencies could develop program options.

Insofar as state appropriated dollars might be available, they should be used in the form of revolving loan funds. Here federal dollars could be added to the revolving loan fund, could provide additional security for the fund, could be used to pay the cost of certain infra-structure requirements, or could be used for administrative and technical assistance expenditures.

In every instance, the federal dollars should be used as an incentive for state activity. States and Indian tribal organizations should have the opportunity to put together a state program which reflects the conditions and requirements of the particular state. There should be flexibility in the utilization of the federal dollars as long as there is a requirement that state resources be used and that Indian organizations be involved in the design and implementation of the program.

If states are to play a continuing role in financing Indian housing on reservations and if tax exempt revenue bonds are to be a tool for doing this, then the federal restrictions on the use of tax exempt financing need careful review and there must be the opportunity to provide tax exempt bond financing after December 31, 1983. Because programs on reservations would be more expensive due to additional insurance and security requirements, the arbitrage limits on these type of bonds would need to be much less stringent than currently exist in federal law and regulation.

In no instance should the federal funds be used to set complex or difficult federal construction standards or requirements beyond those that already exist in terms of providing adequate security for the projects financed by state housing finance agencies.

Thank you for including the Minnesota Housing Finance Agency's comments regarding S. 2847, the Indian Housing Act of 1982. We encourage your efforts in addressing this serious housing problem.

If you need additional information or assistance, please feel free to contact me.

Sincerely,

James J. Solem
Executive Director

A STATEMENT BY: THE NATIONAL INSTITUTE OF BUILDING SCIENCES ON THE INDIAN HOUSING ACT OF 1982 (S. 2847)

The Select Committee is well aware of the charge given to the National Institute of Building Sciences (NIBS) by the Congress to make findings and to advise both the public and private sectors of the economy with respect to the use of building science and technology in achieving nationally acceptable criteria, standards and other technical provisions for use in Federal, State, and local housing and building regulations. While we have not studied the specific issues involving Indian housing, the basic concerns about codes, standards and building regulations have been addressed by the Institute and with revealing results.

The Institute has been involved with housing construction and safety standards since its inception in 1977. We have had numerous consulting relationships with federal agencies involving assessments of building standards including our contractual relationship with HUD to evaluate the "reference standards" contained in the Manufactured Housing Construction and Safety Standards (MHCSS).

In 1976, the Department of Housing and Urban Development (HUD) promulgated the Mobile Home Construction and Safety Standards (MHCSS) as a federal regulation controlling the design and construction of mobile homes nationwide. The MHCSS was substantially based on the "Standard for Mobile Homes, " NFPA 501B-1974/ANSI A119.1-1975. A119.1 was a voluntary standard, and the change from a voluntary standard to a federal regulation necessitated that the nearly 200 voluntary standards referenced within the MHCSS be evaluated to determine their specific applicability to the design and construction of mobile homes.

Under contract to HUD, the Institute sought to obtain and then to analyze these standards. It was found that some 75 percent of these standards had been revised or otherwise changed since the MHCSS was adopted; some were no longer

available. However, in almost all cases, those standards were directly applicable to mobile home design and construction. This was not the case with the approximately 1000 additionally standards that were referenced within these primary standards. Of these additional standards, which the Institute chose to call "supportive standards", virtually none had any appreciable effect on the substance, interpretation, or scope of the MHCSS--that is, the standards were for raw or basic materials, for methods of packing, shipping or marking, for measurement or testing of raw or basic materials, for materials inappropriate to mobile home use, or for bibliographic or information reference.

This was a significant finding (and relevant to the subject of Indian housing) since prior to the Institute's analysis there was speculation about the possible affects the supportive standards might have, or could be construed to have, on enforcement of building codes. This issue will be resolved once the handful of supportive standards that were deemed applicable to the design and construction of mobile homes are included directly in the MHCSS as reference standards.

The problem of constantly changing reference standards made the research lengthy and difficult. The voluntary standards-making process is dynamic, with constant updating of standards to keep them as current and thus as useful as possible. For instance, the American National Standards Institute (ANSI), a coordinator of many of the voluntary standards used in the United States, requires that all ANSI-designated standards be either withdrawn, revised or reissued every five years.

The fact that after several years the standards referenced in a federally mandated regulation may become outdated by this ongoing revision process presents a serious problem both to the regulator and to the regulated. This problem has been recognized by HUD and the mobile home industry, and by others, such as the

Administrative Conference of the United States. In its August 1978 report, "The Role of Nongovernmental Standards in the Development of Mandatory Federal Standards Relating to Safety and Health," the Conference describes a similar problem encountered by OSHA:

> "The failure to adopt revisions in voluntary standards creates a serious problem since revisions usually involve adaptation to technological change or improved methods of safety. The agency is therefore in the anomolous position of appearing to enforce an older standard even though an improved standard is available."

The Institute's analysis of the manufactured housing situation was reviewed in depth by HUD, by HUD contractors that were working on other aspects of mobile homes research, and by a specially constituted NIBS advisory panel that had balanced industry, manufacturer, research and consumer representation. Subsequent to these reviews, a final analysis was made and the results were presented in a final report to HUD. The analysis identified all standards that were current and relevant to the design and construction of mobile homes.

Based on the findings in this study, the Institute strongly recommended that a mechanism be devised to regularly update the MHCSS so that the dynamic nature of the voluntary standards-making process, and its inherent benefits to the design and construction of mobile homes, can be better utilized to improve the quality and lower the costs of mobile homes produced under the HUD regulation. This recommendation presumed that HUD would continue to enforce the MHCSS as a "federal standard".

The manufactured housing (mobile home) standards have not undergone a comprehensive review and modification since they became effective in 1976. This further illustrates the danger of regulations becoming stagnant and reference standards becoming useless as the government fails to recognize the most recent versions of standards produced by voluntary consensus organizations.

Simply stated, it is the expressed view of the Institute that the Federal Government should withdraw from the standards-writing business wherever possible. However, the government should participate in the voluntary standards-making process. Then, when one or more voluntary standards are available for a specific purpose the government can be assured that such standards are "adequate" and that such requirements are not "excessive."

The key issue is whether there is justification for different health and safety provisions for different types of housing. Certainly, to return to our example, one of the major benefits to the manufactured housing industry of a preemptive HUD standard on mobile homes is that it solves the industry's problem concerning marketing across political jurisdictional lines (i.e., the product will not have to be adjusted to satisfy different state or local requirements or be subjected to inspections in each jurisdiction that can only be conducted by inspecting within built elements of the finished product). However, this problem is not exclusive to mobile homes; even site-builders have difficulty marketing a given design in multiple jurisdictions.

No judgment has been made by the Institute concerning whether different performance levels should be permitted for different types of housing or for housing intended for different markets or uses; the point is simply that the issue must be addressed and that it is best to address it before a new standard or set of code provisions are created. However, the role of the government should be a participatory and supportive one...not that of passing a one-time judgment or of establishing minimum limits.

With regard to the deliberations of the Select Committee on Indian Affairs, the Institute recommends that no housing standards be incorporated into legislation that would result in the stagnation of reference standards or in the

legal establishment of minimum acceptable levels of housing performance. Furthermore, the Institute would encourage the Bureau of Indian Affairs and other Federal agencies concerned with shelter for Indian populations to participate in the voluntary consensus standards-making process consistent with the Office of Management and Budgets' recently issued OMB Circular No. A-119. This new circular was transmitted to the heads of all executive departments and agencies on October 26, 1982, by OMB Director, David Stockman. It sets forth guidance to agencies in relying upon, working with, and otherwise using private sector standards for procurement and regulatory purposes. OMB Circular No. A119 is a policy document reflecting many of the same views the Institute has expressed. A copy of the new circular is attached to this statement for the Committee's use.

The Institute is pleased to have this opportunity to advise the Committee and we look forward to assisting you with other building-related matters.

Pat McLaughlin
Chairman

[illegible]
Wakpala, SD 57658

TRIBAL OFFICE - (701) 854-7231
Fort Yates, ND 58538

The Standing Rock Sioux Indian Tribe appreciates this opportunity to present our views on S. 2847, the Indian Housing Act of 1982.

We want to extend a special thank you to our Senator, Mark Andrews, for co-sponsoring this significant legislation and we commend the staff of this Committee and their counterparts in the House of Representatives for the many months of hard work and innovative thoughts that have resulted in a new approach toward solving the problems of administering Indian housing programs.

That there is a need for this legislation is beyond doubt. We have studied Indian housing issues to the point of absurdity. Congressional Committees, the GAO, private research groups and national Indian organizations have proposed solutions and made recommendations, primarily to HUD, for years. These recommendations have fallen on deaf ears. The fact of the matter is that the Indian Housing Program at HUD is like an unwanted child. Those of us who advocate for Indian housing realize that between OMB trying to zero fund the program and the internal HUD bureaucracy constantly creating obstacles while managing the program poorly, there is not really much left to fight for at HUD. It is with these problems in mind that the legislation presently before the Committee was conceived.

As you may know, the Standing Rock Sioux Reservation is located in southern central North Dakota and northern central South Dakota on over 2 million total acres of land of which approximately 800,000 acres are in tribal or allotted status. We have approximately 9,000 Indian people living on or near the reservation. At present, our tribal unemployment rate is over 85%, with youth unemployment statistics approximating 90%. We would relish reaching an unemployment rate of 10%, a figure this country as a whole is trying to avoid. We have virtually no industry on the reservation.

The housing situation at Standing Rock is as one would expect in an area so high in poverty and without access to private capital. The national statistics as reported by the GAO are that 62 percent of all Indian people live in substandard housing, and 27 percent live in over-crowded housing. Indian people live in homes with no indoor bathrooms at a rate seven times the nation's average; they live in homes with no running water at a rate 15 times the national mean. The situation on our reservation reflects these statistics.

HUD's primary thrust has been to mistakenly attempt to fit rural, reservation based Indians into a format generally tailored for urban general assistance programs. HUD has guaranteed the failure of its Indian housing program because of this lack of flexibility. S. 2847 offers tribes a viable alternative aimed at curing the ills of the HUD plan.

We think the substantive titles of the bill are well designed to meet the three broad categories of Indian people needing assistance on reservations. The very poor, who cannot possibly pay for their own housing would be well served by Title I of the bill, thus giving a statutory basis to the existing Bureau of Indian Affairs HIP program. HIP has worked fairly well in the past but it has been consistently severely underfunded. We question whether the first year funding for Title I of $30 million will be sufficient. The authorization of $50 million in 1987 is much more in tune with the numbers of homeless Indians who would qualify for Title I. We think it is sound management policy to require the promulgation of tribal housing plans and to require that housing assistance offered under Title I be in consonance with such a plan. We feel Section 104 is a good provision and is an aspect of the bill that will relieve the fears of some that this legislation will be abused by unscrupulous speculators to reap large profits at the expense of the federal government.

Title II

We support the concept of an Indian Housing Finance Fund as proposed under the sections of this title which would provide a financing alternative when other public and private entities refuse to lend or guarantee mortgage monies to low or moderate income Indian families because of overly restrictive and nonresponsive loan qualification provisions. The construction, acquisition and rehabilitation provisions give sufficient latitude to a tribal housing agency to choose a cost effective method of providing the most housing for the least cost.

In section 202 there is a requirement that the tribe submit to the Secretary of the Interior a comprehensive housing assessment survey and a plan of work for multi-year periods prior to becoming eligible to participate in the program proposed under the Act. Proper preparation of such data can be costly and time consuming; we therefore propose that the costs incurred by the tribe in preparing such a plan be reimbursible from the fund after the tribal application has been approved. In the alternative, Section 402(a) of the bill could be amended to include such financial assistance in conjunction with the technical assistance from the BIA which this section now provides.

Any financial and/or technical assistance should also include the services of an architect who would be chosen by the tribe. Requesting the tribe to prioritize and assess its own housing needs is commendable and comports with the principle of Indian self-determination.

We question the legislative language in the wording of section 203(b)(1), which states that applications will be evaluated and approved based upon, among other factors, "a priority for those tribes which have not received financing from the fund in prior fiscal years". It is understood that the Committee's intent is to ensure that all tribes have equal access to these limited funds, but such language could be used as the basis for not funding a successful tribal housing authority's program because of monies allocated under the program in a prior year. In effect, it could penalize an efficiently administered program which had previously repaid some or even all of its prior appropriations. We suggest an amendment which would take into account repayments to the revolving loan fund and thus establish a parallel set of evaluation criteria based upon on-going performance within the guidelines of the bill as passed and its regulations. We note that section 203(b)(2) contains criteria which reflect an examination of the administrative capabilities of a program, and perhaps the amendment would be appropriate there.

We have problems with Section 205. Indian tribes often have only two things of value: land and trust assets. We do not want to put up our trust assets and gamble that they might be lost. This could set a very negative precedent. Never before through statute has anyone suggested that trust assets be compromised in such a manner. We do not think it is time to start. We urge that Sections 205(a), (b) and (c), 209(b)(4) and 211(c)(3) be stricken from the bill. The bill as drafted already provides for the situation where a family not paying the tribal housing agency what it has agreed to pay may be taken to Tribal Court and we feel that this is sufficient to legally protect the agency and guarantee payment. Further safeguards to ensure repayment might include: a written contract between the tribal housing agency, the Bureau of Indian Affairs, and the participant family; recommendations to the tribal executive legislative, and judiciary that appropriate landlord/tenant and real property codes and laws be considered; and the pledging of other non-trust tribal assets as collateral in lieu of trust lands or assets.

Section 209(b)(1) must be clarified to specifically delineate the amount of land to be leased or transferred under the housing assistance contract. In lieu of determining a specified portion of an individual's trust or fee lands, Committee Report language should be inserted clearly expressing an intent to transfer or encumber the least possible acreage, such as a 1/4 acre plot upon which the house actually sits, along with subsidiary rights-of-way for other necessary construction operations. We assume this provision was intended to refer to the immediate lands upon which the house would sit; however, this is not specifically stated in section 209. As drafted, this section could require that a family transfer or encumber all of its trust lands to the agency.

We further question the necessity for a transfer of title to these lands. An alternative to actual transfer would be to execute an appropriate mortgage instrument and thus encumber, but not transfer these lands to the agency. A security interest would attach and only upon default would the transfer become effective.

Section 209(b)(3) requires the homebuyer to pay all utilities and maintenance and in Section 210, the family is asked to pay administrative charges, insurance premiums and a contingency reserve for maintenance. We really question whether people eligible for assistance under Title II will be able to pay all these costs. In the winter months on our reservation, utility bills can easily be $500 and more per month. HUD presently subsidizes the costs in this area. When you add up utility charges, administrative charges, insurance premiums, a contingency charge for maintenance and 20 percent adjusted family income, it will in many cases total much more than the 30 percent of income that HUD is proposing to charge.

Title III

As amended by the House of Representatives, section 301 now allows tribes to become eligible borrowers. We assume this Committee concurs with that amendment. As amended, this section would not only allow tribes to construct and operate rental housing, but would offer loan guarantees foryouth and elderly group homes, and rehabilitative facilities as well. Many of these projects can offer housing allowances for participants which can be used to repay mortgages. After a time, the rental or group units will be paid off and the programs themselves would gain a measure of self-sufficiency.

We suggest that section 309 be amended to allow the tribe a right of first refusal to purchase the defaulted loan before foreclosing or assigning it to the Secretary.

Title IV

Our concern with this title is one that we have often expressed with regard to other functions and activities under the jurisdiction of the Bureau of Indian Affairs. Programs top heavy with administrative costs result in too little money finally falling into actual program operations. Given the nature of the bill, it is likely that many tribes will apply for assistance. If possible, either the bill itself or the Committee Report should emphasize accountability from the Bureau and mandate that the administrative expenses which accrue pursuant to the authority in section 401(c) be either capped at a certain percentage of appropriations or otherwise limited.

We feel that section 406 is unnecessarily instrusive upon tribal sovereignty and implies an inability of a tribe to set and establish governmental priorities. It should be eliminated from the bill.

The bill, if modified as requested, represents a dramatic departure from the limitations imposed by the current policy of one federal agency and could certainly become the vehicle for a change in Indian housing conditions throughout the United States. The Standing Rock Sioux Tribe commends the Committee for its hard work and dedication toward that end.

# NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION

Suite 910 • 1010 Vermont Avenue, N. W. • Washington, D. C. 20005 · 4949
202 – 737-7011


RESOLUTION NTCA No. 82-30

A RESOLUTION TO SUPPORT PASSAGE OF COMPANION BILLS H.R.5988 AND S. 2847, "THE INDIAN HOUSING ACT OF 1982".

WHEREAS, Congressman Morris Udall and Senator Thad Cochran have introduced bills providing for an "Indian Housing Act of 1982" to provide for an Indian Housing Program, and for construction and financing of housing for Indians, and

WHEREAS, the bills were drafted with input from Indian Country, and provide for the first time a legislative answer to the problems of obtaining financing for the construction of private homes on trust land, a statutory basis for the operations of BIA's Housing Improvement Program, and an alternative to overly long-term federal commitments in the construction of housing for low and moderate income Indian families on reservations, and

WHEREAS, there is no direct connection between the companion bills and the ongoing Indian Housing program of the Department of Housing and Urban Development, though enactment of the proposed Act would assure continuation of the Indian housing effort were HUD programs to be curtailed, and

WHEREAS, the bills' provisions giving flexibility to elected tribal governments in the structuring, establishment, or designation of "tribal housing agencies", are supportive of the self-determination policy, now

THEREFORE BE IT RESOLVED that the membership of the National Tribal Chairmen's Association in convention assembled does hereby endorse the passage and enactment of H.R. 5988 and S. 2847.

CERTIFICATION

The foregoing Resolution was duly adopted by the membership of The National Tribal Chairmen's Association at its' duly constituted Convention in Nashville, Tennessee, on this 24th day of September, 1982, at which time a quorum was present.

Phillip Martin
President, NTCA

ATTEST:

IN REPLY REFER TO

# PUEBLO DE ACOMA

"THE SKY CITY"
P O Box 309
ACOMITA, NEW MEXICO 87034
TELEPHONE (505) 552-6606

OFFICE OF THE GOVERNOR

RESOLUTION NO. TC-OCT-20-82-05-0-4

GOVERNOR
Merle L. Garcia
FIRST LT. GOVERNOR
Fermin H. Martinez
SECOND LT. GOVERNOR
Wayne J. Salvador
SECRETARY
Robert T. Garcia
INTERPRETER
Dennis Lorenzo

THE TRIBAL COUNCIL SUPPORTS PASSAGE OF COMPANION BILLS H.R. 5988 AND S-2847, THE INDIAN HOUSING ACT OF 1982. (ACOMA NEEDS 996 UNITS ESTIMATED COST OF $49,760,160 THROUGH 1991.)

At a duly called meeting of the Tribal Council held at the Pueblo of Acoma on the 20th day of October, 1982, the following resolution was adopted:

WHEREAS:

Sec. No. 1 The Acoma Pueblo is an Indian Tribal organization and has full power and authority to act for the Tribe; and,

Sec. No. 2 The Acoma Tribal Council exercises the rights and powers to negotiate with the federal government; and,

Sec. No. 3 It is the policy of the United States in keeping with treaties (February 2, 1848, 9 STAT, 929) understanding and long established custom to provide certain necessary services and facilities to Native American Indians; and,

Sec. No. 4 The Acoma Tribal Council acting in and for the authority of Pueblo of Acoma takes cognizance in addressing the housing needs for the community and Acoma people; and,

Sec. No. 5 Congressman Morris Udall and Senator Thad Cochron have introduced bills providing for an "Indian Housing Act of 1982" to provide for an Indian Housing Program and for construction and financing of housing for Indians; and,

Sec. No. 6 The bills were drafted with input from Indian country, and provide for the first time a legislative answer to the problems of obtaining, financing for the construction of private homes on trust lands, a statutory basis for the operations of BIA's Housing Improvement Program, and an alternative to overly long term federal committments in the construction of housing for low and moderate income Indian families on the Pueblo of Acoma Land Grant; and,

Sec. No. 7 There is no direct connection between the Companion Bills and the ongoing Indian Housing Program of the Department of Housing and Urban Development though enactment of the proposed Act would assure continuation of the Indian housing effort were HUD Program to be curtailed; and,

Sec. No. 8 The Bills' provisions giving flexibility to elected Tribal governments in the structuring, establishment, or designation of "tribal housing agencies" are supportive of the self-determination (PL 93-638) policy; and,

Sec. No. 9 On Acoma Pueblo most of the homes are 50-400 years old, and are:

Sub-Section (1) 20% are deteriorating.

Sub-Section (2) 46% are dilapidated.

Sub-Section (3) 62% are overcrowded.

Sub-Section (4) 36% are without water.

Sub-Section (5) 50% are without sewer.

Sub-Section (6) 59% are heated with wood fuel.

Sub-Section (7) 59% are without hot water.

Sub-Section (8) 50% are lacking one or more plumbing facility.

Sec. No. 10 Housing ranks #5 on Tribal priorities long range plans, and needs 996 housing units by 1991 with the estimated cost at $49,760 = $49,760,160.

NOWTHEREFORE BE IT RESOLVED:

Sec. No. 1 That, the Acoma Tribal Council does hereby endorse the passage and enactment of H.R. 5988 and S-2847; and,

Sec. No. 2 "It is time we acted to follow the principles of our founding fathers who wrote in the Constitution that we must promote the general welfare."

Governor, Pueblo of Acoma

1st Lt Governor

2nd Lt Governor

Head Councilman

Councilman

Councilman

ATTEST:

Tribal Secretary

Councilman

# CERTIFICATION

I, the undersigned, as Governor of the Pueblo of Acoma, "Sky City", hereby certify that the Acoma Tribal Council at a duly called meeting of the Tribal Council and the people of Acoma, convened and held on the 20th day of October 1982, at Acoma Pueblo, New Mexico, approved this resolution, a quorum being present, and that 8 voted for, and 0 opposed.

Governor, Pueblo of Acoma

ATTEST:

Tribal Secretary

LAW OFFICES
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KEVIN A. GRIFFIN
LOFTUS E. BECKER, JR.
MARY V. BARNEY

September 27, 1982

RECEIVED 1982

HAND DELIVERED

Honorable William Cohen
Chairman, Select Committee on
Indian Affairs
United States Senate
Washington, D.C. 20510

Re: S. 2847, proposed Indian Housing Act (138.21)

Dear Senator Cohen:

On behalf of our tribal clients, including the Shoshone Tribe, Wind River Reservation, Wyoming, the Assiniboine and Sioux Tribes, Fort Peck Reservation, Montana, and the Standing Rock Sioux Tribe, Standing Rock Reservation, North and South Dakota, we present the following views on S. 2847, the proposed Indian Housing Act. Please include our comments in the record of the hearing on the bill held on September 22, 1982.

The shortage of decent, safe, and sanitary housing on Indian reservations is one of the most acute problems facing Indian tribes today. We greatly appreciate the efforts of the Select Committee to address these difficult and important problems.

We support the intent of S. 2847 as well as the basic outline of the three housing programs it would establish. However, we believe that the bill should be strengthened in several respects. Our major concern is that the bill authorizes excessive financial burdens on the tribes and their members. The conditions placed on the tribes' participation in the housing programs should not be so onerous that they discourage tribes from applying for funds or doom the tribal housing plan to failure once funds are obtained. In particular, Indian tribes should not be subject to greater financial responsibility than cities or states in which federally funded housing authorities are located.

We suggest the following specific amendments to S. 2847:

Section 3(5)

This section defines the term "Indian" for purposes of the bill. The bill speaks of housing assistance to "Indian families". The bill could be interpreted to require that every member of a family must meet the definition in Section 3(5) in order to qualify for assistance. This would exclude, for example, an elderly couple of which only one spouse was a tribal member, or a family in which only one parent was a tribal member and neither parent was descended from Indians residing on a reservation in 1934.

At the very least, the bill should be amended to provide that only one member of the family is required to meet the Section 3(5) definition in order for the family to qualify for assistance. We also recommend that an "Indian" be defined as an individual recognized as an Indian in his or her community.

Title I -- Indian Housing Improvement Program

Section 101(d)

This section provides that the tribe or tribal housing agency that administers the housing improvement program may require the assisted family to make a monthly payment not to exceed the administrative charge established in Section 210. We believe that this payment should be limited to at most 20% of the family's adjusted gross income.

Section 104

This section provides that where a house constructed, acquired, or repaired pursuant to Section 102(a)(2) or (3) is sold, the tribe shall have the right of first refusal on the sale of the house if it is on trust land. We recommend that the tribe have the same right even where the house is located on fee land. This will enable the tribe to provide more housing for its needy members and increase the tribe's ability to plan and develop Indian communities on reservations where land ownership is checkerboarded.

Section 105

This section would authorize $30,000,000 for home improvement in FY 1983, $40,000,000 in FYs 1985 and 1986,

and $50,000,000 in FY 1987. Given the grossly inadequate nature of housing on the reservations, these funding levels will not be sufficient to achieve necessary progress during the four year life of the Act. The housing problem is particularly acute for Indian families at the lowest income levels, and the housing improvement program is the only one of the three programs in the bill to which such families would have access. Based on these considerations, we recommend a substantial increase in the funding authorized by Title I.

Title II -- Indian Housing Finance Fund

Section 205(a)(2)-(c)

Sections 205(a)(2)-(c) are extremely objectionable and should be eliminated. They authorize the Secretary to attach tribal trust funds in the event that the tribal housing agency does not meet its financial obligations as set forth in Section 211 (i.e., a 90% collection rate of monthly payments). Although the bill places some conditions on the Secretary's authority to attach tribal funds, the provision is still unfair and discriminatory. Tribal funds should not be held hostage to the failure of the tribal housing agency to meets it obligations. The tribe is not given operational control of the housing program, yet it is expected by this section to support it financially. This discriminates against tribes vis-a-vis other governments. When tenants of the Chicago Housing Authority are in arrears in their rent, the federal government does not seize the funds of the City of Chicago. No different treatment should be provided for tribes.

Requiring an efficient system of collection and the prompt auditing of accounts should be sufficient to ensure that the tribal housing agency will meet its obligations. In addition, the bill provides for attachment of the trust funds of individuals who do not make their payments. If serious problems arise which cannot be solved through ordinary administrative means, then the tribe can be declared ineligible for further funds until the situation is rectified. However, attachment of tribal trust funds, which could paralyze tribal programs and further impoverish tribes with limited resources, must not be permitted. Indeed, the very prospect of such attachment will discourage tribes from applying for housing funds, and defeat the objectives of the program.

Section 209

This section provides that Indian families receiving assistance from the housing fund must make monthly payments of 20% of their adjusted income. However, the monthly payment cannot be less than the minimum payment established in Section 210, which is intended to cover administrative, insurance, and maintenance costs. This section should be amended to provide that the family can never be required to pay more than 20% of its adjusted income. Impoverished families should not be required to pay an excessive portion of income for housing, especially if individual trust funds are to be subject to attachment for failure to make monthly payments.

Section 214

This section provides that families receiving assistance from the housing finance fund must be responsible for utility costs. This is not practical for reservations in cold climates. For our clients, located in northern areas, utility bills are very high during the winter months. If the housing fund does not provide assistance in meeting these costs, many families will be unable to participate in the program. We urge that the Secretary be required to allocate funds under Title II to assist families with high utility bills. A portion of the "maintenance reserve account" established in Section 210 could be used for this purpose.

Section 220

This section provides that funds under Title II may be used to construct rental housing, and that the tribe shall be responsible for all utilities and maintenance costs for such housing. Many tribes are in dire need of suitable rental housing, particularly for their elderly members who require a group living environment. However, for the reasons discussed above, most tribes will be unable to afford the expenses of utilities and maintenance for a rental housing project.

Section 220 should be amended to provide that tribes seeking to establish rental housing shall receive an allocation from the housing finance fund to assist them in covering utilities and maintenance costs. This could be accomplished in part by giving tribes access to the "maintenance reserve fund" that the Secretary will establish

with a portion of the tenants' monthly payments. In addition, the tribal housing agency should be permitted to require those tenants who can afford to do so to pay a portion of their utility bills.

Conclusion

We appreciate your support of S. 2847 and request that your committee adopt our suggested amnendments. We believe that with these amendments, the bill if enacted will establish Indian housing programs that are both fair and financially sound. Such programs are essential if the goal of decent housing for every Indian family is to be achieved.

Sincerely,

Reid Chambers

Reid Peyton Chambers

RPC:mjf

cc: Timothy Woodcock
Michael Mahsetki

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